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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5938 of February 28, 1989

American Red Cross Month, 1989

By the President of the United States of America

A Proclamation

The Red Cross, as a symbol and an ideal, has meant help and reassurance to millions of Americans and people around the world. To Henry Dunant, founder of the International Red Cross 125 years ago, help meant a bright red cross on a white banner, carried onto battlefields by those tending wounded soldiers and civilians innocently caught in conflict. To Clara Barton, founder of the American Red Cross, help meant all that Dunant envisioned plus a system by which people could voluntarily help each other cope during times of disaster, not just during war. Today, we need only look to the success of the American Red Cross to see how both visions have become realities.

Whether it has been in a major emergency like the tornadoes that struck North Carolina last fall or in the aftermath of the terrible death and destruction of the earthquake in Armenia, the Red Cross has been there extending the hand of help. In 1988, 4.2 million people were given emergency food, clothing, and shelter by more than 76 thousand Red Cross disaster volunteers.

Clara Barton's dream of mitigating the suffering of disaster victims also brought an understanding of the need to help the entire population to be better prepared for day-to-day emergencies. This has meant teaching 7.1 million people first aid, Red Cross CPR, swimming, and water and boating safety. Now, perhaps more than ever, we realize how education can mean survival as we and people around the world face the deadly threat of AIDS. The Red Cross has helped us understand this health crisis by disseminating AIDS prevention information.

Thousands of persons needing blood owe a debt of gratitude to the American Red Cross. From recruitment of volunteer donors to collecting and testing that ensures the safest blood possible, last year the Red Cross was able to provide our ill and injured with 6.4 million units of blood.

Our American Red Cross also provides important humanitarian service to our military personnel and their families, including counseling and assistance and referral services for active-duty military, veterans, and their dependents. Our young people, too—more than 3 million of them—have made a valuable commitment to public service through the Red Cross. From organizing high school and college bloodmobiles to visiting patients in hospitals and retirement homes, youth programs are another reason why we should appreciate the work of this remarkable organization.

From the visions of Henry Dunant and Clara Barton have come one of the greatest volunteer movements in history. The strength of the Red Cross can be seen every day, everywhere, through the work of people who believe that a successful life must include serving others. It is through their commitment that a bright red cross on a white banner continues to mean hope, dignity, and compassion to thousands of people in need, both here at home and around the world.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America and Honorary Chairman of the American National Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United

States, do hereby proclaim the month of March 1989 as American Red Cross Month. I urge all Americans to continue their generous support and ready assistance to the work of the American Red Cross and its nearly 3,000 Chapters and stations on military installations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

[FR Doc. 89-5071
Filed 3-1-89; 11:03 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1204

Availability of Official Information

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The U.S. Merit Systems Protection Board (Board) is amending its regulations at 5 CFR Part 1204 by adding a section on the availability of confidential commercial information. The new section establishes procedures to notify submitters of records containing confidential commercial information when those records are requested under the Freedom of Information Act, 5 U.S.C. 552, as amended, if, after reviewing the request, the responsive records, and any appeal by the requester, the Board may be required to disclose the records. These procedures comply with Executive Order 12600 issued on June 23, 1987, and published in the Federal Register on June 25, 1987.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, (202) 653-7200.

List of Subjects in 5 CFR Part 1204

Freedom of Information, Practices and procedures, Privacy.

Accordingly, 5 CFR Part 1204 is amended as follows:

PART 1204—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for Part 1204 is revised to read as follows:

Authority: 5 U.S.C. 552 and 1205, Pub. L. 99.507; Section 1204.14 also issued under E.O. 12600, 52 FR 23781, June 25, 1987.

2. Section 1204.14 is added to read as follows:

§ 1204.14 Requests for access to confidential commercial information.

(a) *General.* Confidential commercial information provided to the Board by a business submitter will not be disclosed in response to a Freedom of Information Act request except in accordance with this section.

(b) *Definitions.* (1) The term "confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) The term "submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Notice to business submitters.* The Board will provide a business submitter with prompt written notice of a request encompassing its confidential commercial information whenever that action is required under paragraph (d) of this section, and except as provided in paragraph (h) of this section. This written notice will either describe the exact nature of the confidential commercial information requested or will provide copies of the records or portions of records containing the commercial information.

(d) *When initial notice is required.* (1) With respect to confidential commercial information submitted to the Board before January 1, 1988, the Board will give the business submitter notice of a request whenever:

(i) The information is less than 10 years old; or

(ii) The Board has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) With respect to confidential commercial information submitted to the Board on or after January 1, 1988, the Board will give notice to the business submitter whenever:

(i) The business submitter has designated the information in good faith as commercially or financially sensitive information; or

(ii) The Board has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for commercially confidential information submitted before January 1, 1988, is required for a period of not more than 10 years after the date on which the information is submitted unless the business submitter requests, and provides justification for, a longer specific notice period. Whenever possible, the submitter's claim of confidentiality must be supported by a statement or certification, by an officer or authorized representative of the company, the the information in question is in fact confidential commercial information and has not been disclosed to the public.

(e) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, the Board will afford a business submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act. In addition, in the case of Exemption 4, the statement must demonstrate why the information is alleged to be a trade secret, or to be commercial or financial information that is privileged or confidential. Information a business submitter provides under this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f) *Notice of intent to disclose information.* The Board will consider carefully a business submitter's objections and specific grounds for claiming that the information should not be disclosed before determining whether to disclose confidential commercial information. Whenever the Board decides to disclose confidential commercial information over the objection of a business submitter, it will forward to the business submitter a written notice that includes:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sufficient;

(2) A description of the confidential commercial information to be disclosed; and

(3) A specified disclosure date. The Board will forward the notice of intent to disclose the information a reasonable

number of days, as circumstances permit, before the specified date upon which disclosure is expected. It will forward a copy of the disclosure notice to the requester at the same time.

(g) *Notice of Freedom of Information Act lawsuit.* Whenever a requester files a lawsuit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Board will notify the business submitter promptly.

(h) *Exceptions to notice requirements.* The notice requirements of this section do not apply when:

(1) The Board determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The disclosure is required by an agency rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act; or

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(5) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to this section, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter in accordance with Board regulations appears obviously frivolous; except that, in such case, the Board must provide the submitter with written notice of any final administrative disclosure determination within a reasonable period prior to the specified disclosure date.

Date: February 24, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-4833 Filed 3-1-89; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASO-23]

Revision of Transition Area, Alabaster, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Alabaster, AL, Transition Area by adding an arrival area extension. The extension will provide airspace protection for aircraft executing a new Nondirectional Radio Beacon (NDB), Runway 33, Standard Instrument Approach Procedure (SIAP) to the Shelby County Airport. Also, this action corrects the geographic position coordinates for Bessemer Airport.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On December 19, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Alabaster, AL, Transition Area (53 FR 50974). This proposed revision would add an arrival area extension to provide airspace protection for aircraft executing a new NDB SIAP being planned for Runway 33 at the Shelby County Airport. Also, the proposal would correct the geographic position coordinates for the Bessemer Airport. Interested parties were invited to participated in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Alabaster, AL, Transition Area by adding an arrival area extension to provide additional controlled airspace for aircraft executing a new NDB SIAP to Runway 33 at the Shelby County Airport and corrects the geographic position coordinates for the Bessemer Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Alabaster, AL [Amended]

By deleting the existing description and substituting the following: "That airspace extending upward from 700' above the surface within a 7-mile radius of Shelby County Airport (Lat. 33°10'41"N; Long. 86°47'01"W); within 3.5 miles each side of the 168° bearing of the Calera RBN (Lat. 33°07'06"N; Long. 86°46'02"W), extending from the 7-mile radius area to a point 11 miles south of the RBN; within a 6.5-mile radius of Bessemer Airport (Lat. 33°18'46"N; Long. 86°55'32"W); excluding that portion which coincides with the Birmingham, AL, Transition Area."

Issued in East Point, Georgia, on February 14, 1989.

William D. Wood,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 89-4835 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASO-21]

Revision to Transition Area, Lake City, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Lake City, SC, Transition Area. This action deletes an arrival area extension based on the 192° bearing from the Evans RBN and adds a new extension either side of the 288° bearing of the RBN. This amendment is necessary to afford Airspace Protection for aircraft executing a new standard instrument approach procedure (SIAP) to the Lake City Municipal C.J. Evans Field Airport.

EFFECTIVE DATE: 0901 u.t.c., August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Melvin Brock, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On December 19, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Transition Area, Lake City, SC (53 FR 50974). The nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) originally proposed based on the 192° bearing from the Evans Radio Beacon (RBN) was never developed. A new NDB SIAP has been developed predicated on the 288° bearing of the Evans NDB. The proposed amendment would delete the arrival area extension along the 192° bearing and add a new extension either side of the 288° bearing of the Evans RBN. This action is necessary to afford airspace protection for aircraft executing the new SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment of Part 71 of the Federal Aviation Regulations revises the Lake City, SC, Transition Area by deleting an arrival area extension and adding a new extension to provide airspace protection for aircraft executing a new SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lake City, SC [Amended]

By removing the existing description and adding the following: "That airspace extending upward from 700' above the surface within a 6.5-mile radius of the Lake City Municipal C.J. Evans Field Airport (Lat. 33°51'14"N; Long. 79°46'08"W); within 3 miles each side of the 283° bearing from the Evans RBN (Lat. 33°51'21"N; Long. 79°45'58"W), extending from the 6.5-mile radius area to 8.5 miles west of the RBN; excluding that portion which coincides with the Kingstree, SC, Transition Area."

Issued in East Point, Georgia, on February 14, 1989.

William D. Wood,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 89-4836 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-6]

Revison of Transition Area; Athens, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the latitude and longitude coordinates describing the Athens Municipal Airport. The coordinates of the Athens Municipal Airport were revised after the original final rule Airspace Docket 88-ASW-6 was issued. This action will also change the name of the nondirectional radio beacon (NDB) used to execute the standard instrument approach procedure (SIAP) serving the Lochridge Ranch Airport. In the original final rule Airspace Docket 88-ASW-6, this NDB was incorrectly referred to as the Lochridge Ranch NDB. The correct name of this NDB is the Crossroads NDB.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88-ASW-6 was published on August 24, 1988, revising the transition area located at Athens, TX. (53 FR 32211). This action will correct the latitude and longitude coordinates of the Athens Municipal Airport and will also change the name of the NDB used to execute SIAP serving the Lochridge Ranch Airport from Lochridge Ranch NDB to Crossroads NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Athens, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Athens Municipal Airport (latitude 32°09'45"N., longitude 95°49'40"W.), and within 2 miles each side of the 289° radial of the Frankston VOR (latitude 32°04'28"N., longitude 95°31'50"W.), extending from the 6.5-mile radius area to 9 miles east of the Athens Municipal Airport; and within an 8.5-mile radius of the Lochridge Ranch Airport (latitude 31°59'21"N., longitude 95°57'03"W.), and within 4.5 miles each side of the 356° bearing of the Crossroads NDB (latitude 32°03'48"N., longitude 95°57'27"W.), extending from the 8.5-mile radius area to 10.5 miles north of the Lochridge Ranch NDB.

Issued in Fort Worth, TX, on February 9, 1989.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 89–4837 Filed 3–1–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87–17–000]

Natural Gas Data Collection System; Corrections and Revisions to FERC Form No. 2 Record Formats and Availability of Edit Checks For FERC Form Nos. 2, 2–A, 8, 11, 14 and 16

Issued February 23, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of corrections and revisions to FERC Form No. 2 [1] record formats and availability of edit checks for FERC Form Nos. 2, 2–A, 8, 11, 14 and 16.

SUMMARY: This notice identifies revisions to the record formats for FERC Form No. 2. The revisions affect Schedule F5, Records 23, 32, 41, 51, 52 and 53. In addition, the notice includes a list of proposed edit checks for FERC Form Nos. 2, 2–A, 8, 11, 14 and 16.

DATE: The revisions to the FERC Form No. 2 record formats and the proposed edit checks for forms are available on February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7010, Washington, DC 20426, (202) 357–8995 or (202) 357–8844.

SUPPLEMENTARY INFORMATION:

The Commission staff is issuing certain revisions to the record formats for FERC Form No. 2 in order to correct certain inconsistencies with the printed version of the form. The revisions affect the following records in Schedule F5:

1. Record 23: Investments in Subsidiary Companies (Account 123.1).
   a. Information Reported Code has been revised: Individual investment, code = 1, Subtotal, code = 2, Grand total, code = 3.
   b. Item 493a, Total Cost Account 123.1, has been revised to include code = 3.
2. Record 32: Accumulated Deferred Income Taxes (Account 190).
   a. Utility Plant Codes have been revised as previously indicated in the January 31, 1989 Notice of Availability of COBOL Source Code.
   b. Utility Plant Code = 7 (other) is now specified in new Item 559a which was omitted in the previous notice. The location of the footnote ID is adjusted accordingly.
3. Record 41: Unamortized Loss and Gain on Reacquired Debt (Accounts 189, 257).
   a. Account Number is a new item located in character positions 11–17. Subsequent character positions are increased by seven.
4. Records 51, 52 and 53: Accumulated Deferred Income Taxes for Accounts 281, 282 and 283.
   a. Items 663, 674 and 685 have been revised from "Credit Account Number" to "Debit Account Number".
   b. Items 665, 676 and 687 have been revised from "Debit Account Number" to "Credit Account Number".

A complete description of the revised record formats is included in Appendix A of this notice. The print software will be revised to reflect these changes and released at a later date.

The Commission staff is also releasing proposed edit checks for FERC Form Nos. 2, 2–A, 8, 11, 14 and 16. The edit checks are listed in Appendices A through G. The Appendices are not being published in the Federal Register; copies are available in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–4901 Filed 3–1–89; 8:45 am]

BILLING CODE 6717–01–M

[1] See Notice of Availability published at 53 FR 44004 November 1, 1988.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[T.D. 8242]

26 CFR Part 1

Income Tax; Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the diversification requirements for variable annuity, endowment, and life insurance contracts. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect issuers and policyholders of variable contracts and provide them with guidance concerning the tax treatment of those contracts.

DATES: The regulations apply to variable annuity, endowment, and life insurance contracts for taxable years beginning after December 31, 1983, except as follows: See 1.817–5(i)(2).

FOR FURTHER INFORMATION CONTACT: Katherine A. Hossofsky, of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:FI&P:4), (202) 566–3458, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide rules under section 817(h) of the Internal Revenue Code of 1986, relating to diversification requirements for variable annuity, endowment, and life insurance contracts. Section 817(h) was added to the Code by section 211(a) of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 750). On September 15, 1986, the **Federal Register** published amendments (T.D. 8101; 51 FR 32633) to the Income Tax Regulations (26 CFR Part 1) to provide temporary regulations under section 817(h). The same issue of the **Federal Register** also published proposed amendments (51 FR 32664) to the Income Tax Regulations and the Table of OMB Control Numbers based on those temporary regulations. This document supersedes the temporary regulations under section 817(h) and adopts final regulations based on the notice of proposed rulemaking published on September 15, 1986.

Before adopting the final regulations, the Internal Revenue Service solicited comments and held a public hearing on the proposed amendments. Fourteen written comments responding to the notice of proposed rulemaking were received. In addition, seven persons provided oral comments at the hearing held on July 1, 1987. After consideration of all comments received, the proposed amendments are adopted as revised by this Treasury decision.

Public Comments

Several commentators argued that if a segregated asset account fails the diversification requirements, any contract invested in such account should fail to qualify as an annuity, endowment, or life insurance contract only for the period during which the account was not adequately diversified. The Internal Revenue Service believes that, in general, failing the diversification requirements should result in disqualification of contracts for all periods. Section 817(h) provides that a variable contract shall not be treated as an annuity, endowment, or life insurance contract for purposes of subchapter L, section 72, and section 7702(a) for any period (and any subsequent period) for which the investments made by a segregated asset account underlying the contract are not adequately diversified. The statutory language indicates that contracts should remain disqualified for periods subsequent to the period for which the investments are not adequately diversified. With respect to prior periods, section 7702 requires that, for a life insurance or endowment contract, any income on the contract for all prior taxable years be treated as income received or accrued by the policyholder if the contract ceases to meet the definition of a life insurance contract. An annuity contract is treated in the same manner under these regulations.

Various commentators suggested that if a failure to diversify is inadvertent and the failure is promptly corrected, contracts based on such an account should continue to qualify as life insurance, endowment, or annuity contracts during all periods. The Internal Revenue Service agrees that variable contracts based upon a segregated asset account that inadvertently becomes nondiversified should be treated as remaining qualified, provided that the issuer or holder of the contract agrees to pay such amounts as may be required by the Commissioner. The amounts required by the Commissioner to be paid will be based on the amount of tax the policyholders would have been required to pay if they were treated as receiving the income on the contract during the period of nondiversification. Although based on the amount of tax described in the preceding sentence, it is anticipated that, in determining the amount of the payment, the absence of a policyholder basis adjustment and other relevant factors will be taken into account.

Several commentators disagreed with the treatment in the proposed regulations of all government securities as securities of a single issuer. This rule has been revised to conform to section 817(h)(6), as added by section 6080 of the Technical and Miscellaneous Revenue Act of 1988.

The proposed regulations provide that the members of an affiliated group, within the meaning of section 1504(a), ordinarily are treated as a single issuer. The final regulations delete this provision.

Various comments relating to the start-up period rules under paragraph (c)(2) of the proposed regulations were received. The proposed regulations provide that the start-up period rules apply only if no more than 30 percent of the amount allocated to a segregated asset account as of any date is attributable to premium and investment income received more than one year prior to such date. A commentator suggested that amounts transferred from a previously diversified account and amounts transferred as a result of a tax-free exchange of an unaffiliated company's contract do not constitute an abuse of the start-up period rules, even if such amounts were received more than one year prior to the test date. In addition, the commentator noted that it is burdensome for companies to trace premium and investment income as of any date. Accordingly, the final regulations provide that if more than 30 percent of the amount allocated to a segregated asset account as of the last day of a calendar quarter is attributable to contracts entered into more than one year before such date, the start-up period rules do not apply. Any amount transferred to the account from a diversified account or any amount transferred as a result of an exchange pursuant to section 1035 with an unaffiliated company is not treated as an amount attributable to contracts entered into more than one year before such date.

Several commentators requested clarification of the rules relating to the aggregation of multiple accounts or funds. The final regulations restate these rules and provide additional clarifying examples.

The final regulations extend the look-through rules applicable to underlying investment companies or trusts all of the interests in which (with certain exceptions) are held by segregated asset accounts to underlying partnerships all of the interests in which are held by such persons. The final regulations clarify that this look-through rule is available to a segregated asset account (notwithstanding ownership of interests in the underlying entity by the public) if all the assets of the segregated asset account are attributable to (i) premium payments made by policyholders prior to September 26, 1981, (ii) premium payments made in connection with a qualified pension or retirement plan, or (iii) any combination of such premium payments. Additionally, the final regulations clarify that the return on an interest in an underlying entity held by the general account of a life insurance company must be computed in the same manner as the return for the related variable contracts prior to deducting expenses related to the variable contracts.

The final regulations include an additional look-through rule for trusts, substantially all of the assets of which are Treasury securities. Under this rule, Treasury securities are still treated as such, even though they are held through a custodial arrangement that is treated as a grantor trust.

Several commentators requested that the regulations clarify whether purchased put and call options on Treasury securities, interest rate futures contracts on Treasury securities, and options on such contracts are classified

as Treasury securities under the regulations. The final regulations clarify that such options and futures contracts are not Treasury securities because their direct obligor is not the U.S. Treasury.

The proposed regulations require that in order to qualify as a real property account, an account must have 40 percent of its assets invested in real property or interests in real property on the first anniversary of the date premium income is first received. A commentator requested that this period be increased to 18 months, because of the extensive time needed to identify and buy real property for investment. Accordingly, the final regulations provide that, if on or before the first anniversary of the account, the issuer has stated an intention to invest the assets of the account primarily in real property or interests in real property, the account will be permitted 18 months to invest at least 40 percent of its assets in such items.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Sharon L. Hall of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.801–1—1.832–6

Income taxes, Insurance companies.

Adoption of Amendments to the Regulations

For the reasons set out in the preamble, Chapter I Subchapter A, Part I of Title 26 of the Code of Federal Regulations is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 1, 1953

Paragraph 1. The authority for Part 1 is amended by adding the following citation and by removing "Section 1.817–5T also issued under 26 U.S.C. 817(h)."

Authority: 26 U.S.C. 7805. * * * Section 1.817–5 also issued under 26 U.S.C. 817(h).

§ 1.817–5T [Removed]

Par. 2. 26 CFR Part 1 is amended by removing § 1.817–5T.

Par. 3. The following new § 1.817–5 is added to read as follows:

§ 1.817–5 Diversification requirements for variable annuity, endowment, and life insurance contracts.

(a) *Consequences of nondiversification*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, for purposes of subchapter L, section 72, and section 7702(a), a variable contract (as defined in section 817(d)), other than a pension plan contract (as defined in section 818(a)), which is based on one or more segregated asset accounts shall not be treated as an annuity, endowment, or life insurance contract for any calendar quarter period for which the investments of any such account are not adequately diversified. For this purpose, a variable contract shall be treated as based on a segregated asset account for a calendar quarter period if amounts received under the contract (or earnings thereon) are allocated to the segregated asset account at any time during the period. In addition, a variable contract that is not treated as an annuity, endowment, or life insurance contract for any period by reason of this paragraph (a)(1) shall not be treated as an annuity, endowment, or life insurance contract for any subsequent period even if the investments are adequately diversified for such subsequent period. If a variable contract which is a life insurance or endowment contract under other applicable (e.g., State or foreign) law is not treated as a life insurance or endowment contract under section 7702(a), the income on the contract for any taxable year of the policyholder is treated as ordinary income received or accrued by the policyholder shall be treated as ordinary income received or accrued by the policyholder during such year in accordance with section 7702 (g) and (h). Likewise, if a variable contract is not treated as an annuity contract under section 72, the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the policyholder during such year in the same manner as a life insurance or endowment contract under section 7702 (g) and (h).

(2) *Inadvertent failure to diversify.* The investments of a segregated asset account shall be treated as satisfying the requirements of paragraph (b) of this section for one or more periods, provided the following conditions are satisfied—

(i) The issuer or holder must show the Commissioner that the failure of the investments to satisfy the requirements of paragraph (b) of this section for such period or periods was inadvertent,

(ii) The investments of the account must satisfy the requirements of paragraph (b) of this section within a reasonable time after the discovery of such failure, and

(iii) The issuer or holder of the variable contract must agree to make such adjustments or pay such amounts as may be required by the Commissioner with respect to the period or periods during which the investments of the account did not satisfy the requirements of paragraph (b) of this section. The amount required by the Commissioner to be paid shall be an amount based upon the tax that would have been owed by the policyholders if they were treated as receiving the income on the contract (as defined in section 7702(g)(1)(B), without regard to section 7702(g)(1)(C)) for such period or periods.

(b) *Diversification of investments*—(1) *In general.* (i) Except as otherwise provided in this paragraph and paragraph (c) of this section, the investments of a segregated asset account shall be considered adequately diversified for purposes of this section and section 817(h) only if—

(A) No more than 55% of the value of the total assets of the account is represented by any one investment;

(B) No more than 70% of the value of the total assets of the account is represented by any two investments;

(C) No more than 80% of the value of the total assets of the account is represented by any three investments; and

(D) No more than 90% of the value of the total assets of the account is represented by any four investments.

(ii) For purposes of this section—

(A) All securities of the same issuer, all interests in the same real property project, and all interests in the same commodity are each treated as a single investment; and

(B) In the case of government securities, each government agency or instrumentality shall be treated as a separate issuer.

(iii) See paragraph (f) of this section for circumstances in which a segregated asset account is treated as the owner of assets held indirectly through certain pass-through entities and corporations taxed under subchapter M, chapter 1 of the Code.

(2) *Safe harbor.* A segregated asset account will be considered adequately diversified for purposes of this section and section 817(h) if—

(i) The account meets the requirements of section 851 (b)(4) and the regulations thereunder; and

(ii) No more than 55% of the value of the total assets of the account is attributable to cash, cash items (including receivables), government securities, and securities of other regulated investment companies.

(3) *Alternative diversification requirements for variable life insurance contracts.* (i) A segregated asset account with respect to variable life insurance contracts will be considered adequately diversified for purposes of this section and section 817(h) if the requirements of paragraph (b)(1) or (b)(2) of this section are satisfied of if the assets of such account, other than Treasury securities, satisfy the percentage limitations prescribed in paragraph (b)(1) of this section increased by the Product of (A) .5 and (B) the percentage of the value of the total assets of the account that is represented by Treasury securities. In determining whether the assets of an account, other than Treasury securities, satisfy the increased percentage limitations, such limitations are applied as if the Treasury securities were not included in the account (*i.e.*, the increased percentage limitations are not applied to Treasury securities and the value of the total assets of the account is reduced by the value of the Treasury securities).

(ii) The provisions of this paragraph (b)(3) may be illustrated by the following examples:

Example (1). On the last day of a quarter of a calendar year, a segregated asset account with respect to variable life insurance contracts holds assets having a total value of $100,000. The assets of the account are represented by Treasury securities having a total value of $90,000 and securities of Corporation A having a total value of $10,000. The 55% limit described in paragraph (b)(1)(i) of this section would be increased by 45% (0.5×90%) to 100%, and would then be applied to the assets of the account other than Treasury securities. Because no more than 100% of the value of the assets other than Treasury securities is represented by securities of Corporation A, the investments of the account will be considered adequately diversified.

Example (2). On the last day of a quarter of a calendar year, a segregated asset account with respect to variable life insurance contracts holds assets having a total value of $100,000. The assets of the account are represented by Treasury securities having a total value of $60,000, securities of Corporation A having a total value of $30,000, and securities of Corporation B having a total value of $10,000. The 55% and 70% limits described in paragraph (b)(1)(i) of this section would be increased by 30% (0.5×60%) to 85% and 100%, respectively, and would then be applied to the assets of the account other than Treasury securities. Securities of Corporation A represent 75%, and securities of Corporation B represent 25%, of the value of the assets of the account other than Treasury securities. Because no more than 85% of the value of the assets other than Treasury securities is represented by securities of Corporation A or B and no more than 100% of the value of the assets other than Treasury securities is represented by securities of Corporations A and B, the investments of the account will be considered adequately diversified.

(c) *Periods for which an account is adequately diversified*—(1) *In general.* A segregated asset account that satisfies the requirements of paragraph (b) of this section on the last day of a quarter of a calendar year (*i.e.*, March 31, June 30, September 30, and December 31) or within 30 days after such last day shall be considered adequately diversified for such quarter.

(2) *Start-up period.* (i) Except as provided in paragraph (c)(2)(iv) of this section, a segregated asset account that is not a real property account on its first anniversary shall be considered adequately diversified until such first anniversary.

(ii) Except as provided in paragraph (c)(2)(iv) of this section, a segregated asset account that is a real property account on its first anniversary shall be considered adequately diversified until the earlier of its fifth anniversary or the anniversary on which the account ceases to be a real property account.

(iii) For purposes of paragraph (c)(2)(i) and (ii) of this section, the anniversary of a segregated asset account is the anniversary of the date on which any amount received under a life insurance or annuity contract, other than a pension plan contract (as defined in section 818 (a)), is first allocated to the account.

(iv) If more than 30 percent of the amount allocated to a segregated asset account as of the last day of a calendar quarter is attributable to contracts entered into more than one year before such date, paragraph (c)(2)(i) of this section shall not apply to the segregated asset account for any period after such date. Similarly, if more than 30 percent of the amount allocated to a segregated asset account as of the last day of a calendar quarter is attributable to contracts entered into more than 5 years before such date, paragraph (c)(2)(ii) of this section shall not apply to the segregated asset account for any period after such date. For purposes of this paragraph (c)(2), amounts transferred to the account from a diversified account (determined without regard to this paragraph (c)(2)) or as a result of an exchange pursuant to section 1035 in which the issuer of the contract received in the exchange is not related in a manner specified in section 267(b) to the issuer of the contract transferred in the exchange are not treated as—

(A) Amounts attributable to contracts entered into more than one year before such date, in the case of accounts subject to paragraph (c)(2)(i) of this section, or

(B) Amounts attributable to contracts entered into more than five years before such date, in the case of accounts subject to paragraph (c)(2)(ii) of this section.

(3) *Liquidation period.* A segregated asset account that satisfies the requirements of paragraph (b) of this section on the date a plan of liquidation is adopted shall be considered adequately diversified for—

(i) The one-year period beginning on the date the plan of liquidation is adopted if the account is not a real property account on such date; or

(ii) The two-year period beginning on the date the plan of liquidation is adopted if the account is a real property account on such date.

(d) *Market fluctuations.* A segregated asset account that satisfies the requirements of paragraph (b) of this section at the end of any calendar quarter (or within 30 days after the end of such calendar quarter) shall not be considered nondiversified in a subsequent quarter because of a discrepancy between the value of its assets and the diversification requirements unless such discrepancy exists immediately after the acquisition of any asset and such discrepancy is wholly or partly the result of such acquisition.

(e) *Segregated asset account.* For purposes of section 817(h) and this section, a segregated asset account shall consist of all assets the investment return and market value of each of which must be allocated in an identical manner to any variable contract invested in any of such assets. See paragraph (g) for examples illustrating the application of this paragraph (e).

(f) *Look-through rule for assets held through certain investment companies, partnerships, or trusts*—(1) *In general.* If

this paragraph (f) applies, a beneficial interest in a regulated investment company, a real estate investment trust, a partnership, or a trust that is treated under sections 671 through 679 as owned by the grantor or another person ("investment company, partnership, or trust") shall not be treated as a single investment of a segregated asset account. Instead, a pro rata portion of each asset of the investment company, partnership, or trust shall be treated, for purposes of this section, as an asset of the segregated asset account. For purposes of this section, the ratable interest of a partner in a partnership's assets shall be determined in accordance with the partner's capital interest in the partnership.

(2) *Applicability*—(i) *Certain investment companies, partnerships, and trusts.* This paragraph (f) shall apply to an investment company, partnership, or trust if—

(A) All the beneficial interests in the investment company, partnership, or trust (other than those described in paragraph (f)(3) of this section) are held by one or more segregated asset accounts of one or more insurance companies; and

(B) Public access to such investment company, partnership, or trust is available exclusively (except as otherwise permitted in paragraph (f)(3) of this section) through the purchase of a variable contract. Solely for this purpose, the status of a contract as a variable contract will be determined without regard to section 817(h) and this section.

(ii) *Nonregistered partnerships.* This paragraph (f) shall also apply to a partnership interest if the partnership interest is not registered under a Federal or State law regulating the offering or sale of securities.

(iii) *Trusts holding Treasury securities.* This paragraph (f) shall also apply to a trust that is treated under section 671 through 679 as owned by the grantor or another person if substantially all of the assets of the trust are represented by Treasury securities.

(3) *Interests not held by segregated asset accounts.* Satisfaction of the requirements of paragraph (f)(2)(i) of this section shall not be prevented by reason of beneficial interests in the investment company, partnership, or trust that are—

(i) Held by the general account of a life insurance company or a corporation related in a manner specified in section 267(b) to a life insurance company, but only if the return on such interests is computed in the same manner as the return on an interest held by a segregated asset account is computed (determined without regard to expenses attributable to variable contracts), there is no intent to sell such interests to the public, and a segregated asset account of such life insurance company also holds or will hold a beneficial interest in the investment company, partnership, or trust;

(ii) Held by the manager, or a corporation related in a manner specified in section 267(b) to the manager, of the investment company, partnership, or trust, but only if the holding of the interests is in connection with the creation or management of the investment company, partnership, or trust, the return on such interest is computed in the same manner as the return on an interest held by a segregated asset account is computed (determined without regard to expenses attributable to variable contracts), and there is no intent to sell such interests to the public;

(iii) Held by the trustee of a qualified pension or retirement plan; or

(iv) Held by the public, or treated as owned by policyholders pursuant to Rev. Rul. 81–225, 1981–2 C.B. 12, but only if (A) the investment company, partnership, or trust was closed to the public in accordance with Rev. Rul. 82–55, 1982–1 C.B. 12, or (B) all the assets of the segregated asset account are attributable to premium payments made by policyholders prior to September 26, 1981, to premium payments made in connection with a qualified pension or retirement plan, or to any combination of such premium payments.

(g) *Examples.* The provisions of paragraphs (e) and (f) of this section may be illustrated by the following examples.

Example (1). (i) The assets underlying variable contracts issued by a life insurance company consist of two groups of assets: (a) a diversified portfolio of debt securities and (b) interests in P, a partnership that is publicly registered. All of the beneficial interests in P are held by one or more segregated asset accounts of one or more insurance companies and public access to P is available exclusively through the purchase of a variable contract. The variable contracts provide that policyholders may specify which portion of each premium is to be invested in the debt securities and which portion is to be invested in P interests. The portfolio of debt securities and the assets of P, considered separately, each satisfy the diversification requirements of paragraph (b) of this section.

(ii) As a result of the ability of policyholders to allocate premiums among the two groups of assets, the investment return and market value of the interests in P and the debt securities may be allocated to different variable contracts in a non-identical manner. Accordingly, under paragraph (e) of this section, the interests in P are treated as part of a single segregated asset account ("Account 1") and the debt securities are treated as part of a different segregated asset account ("Account 2").

(iii) Since P is described in paragraph (f)(2)(i) of this section, interests in P will not be treated as a single investment of Account 1. Rather, Account 1 is treated as owning a pro rata portion of the assets of P.

(iv) Since Account 1 and Account 2 each satisfy the requirements of paragraph (b) of this section, variable contracts that are based on either or both accounts are treated as annuity, endowment, or life insurance contracts.

Example (2). The facts are the same as in example (1) except that some of the beneficial interests in P are held by persons not described in paragraph (f)(3) of this section. Since P is not described in paragraph (f)(2) of this section, interests in P will be treated as a single investment of Account 1. As a result, Account 1 does not satisfy the requirements of paragraph (b) of this section. Variable contracts based in whole or in part on Account 1 are not treated as annuity, endowment, or life insurance contracts. Variable contracts that are not based on Account 1 at any time during the period in which such account fails to satisfy the requirements of paragraph (b) of this section (*i.e.*, contracts based entirely on Account 2), are treated as annuity, endowment, or life insurance contracts. See paragraph (a)(1).

Example (3). The facts are the same as in example (2) except that P is not publicly registered. Since P is described in paragraph (e)(2)(ii) of this section, the result is the same as in example (1).

Example (4). The facts are the same as in example (2) except that the variable contracts do not permit policyholders to allocate premiums between or among the debt securities and interests in P. Thus, the investment return and market value of the interests in P and the debt securities must be allocated to the same variable contracts and in an identical manner. Under paragraph (e) of this section, the interests in P and the debt securities are treated as part of a single segregated asset account. If the interests in P and the debt securities, considered together, satisfy the requirements of paragraph (b) of this section, contracts based on this segregated asset account will be treated as annuity, endowment, or life insurance contracts.

(h) *Definitions.* The terms defined below shall, for purposes of this section, have the meanings set forth in such definitions:

(1) *Government security*—(i) *General rule.* The term "government security" shall mean any security issued or guaranteed or insured by the United States or an instrumentality of the United States; or any certificate of deposit for any of the foregoing. Any security or certificate or deposit insured or guaranteed only in part by the United States or an instrumentality thereof is treated as issued by the United States or its instrumentality only to the extent so insured or guaranteed, and as issued by

the direct obligor to the extent not so insured or guaranteed. For purposes of this paragraph (h)(1), an instrumentality of the United States shall mean any person that is treated for purposes of 15 U.S.C. 80a–2 (16), as amended, as a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States.

(ii) *Example.* A segregated asset account purchases a certificate of deposit in the amount of $150,000 from bank A. Deposits in bank A are insured by the Federal Deposit Insurance Corporation, an instrumentality of the United States, to the extent of $100,000 per depositor. The certificate of deposit is treated as a government security to the extent of the $100,000 insured amount and is treated as a security issued by bank A to the extent of the $50,000 excess of the value of the certificate of deposit over the insured amount.

(2) *Treasury security*—(i) *General rule.* For purposes of paragraph (b)(3) of this section and section 817(h)(3), the term "Treasury security" shall mean a security the direct obligor of which is the United States Treasury.

(ii) *Example.* A segregated asset account purchases put and call options on U.S. Treasury securities issued by the Options Clearing Corporation. The options are not Treasury securities for purposes of paragraph (b)(3) and section 817(h)(3) because the direct obligor of the options is not the United States Treasury.

(3) *Real property.* The term "real property" shall mean any property that is treated as real property under 1.856–3 (d) except that it shall not include interests in real property.

(4) *Real property account.* A segregated asset account is a real property account on an anniversary of the account (within the meaning of paragraph (c)(2)(iii) of this section) or on the date a plan of liquidation is adopted if not less than the applicable percentage of the total assets of the account is represented by real property or interests in real property on such anniversary or date. For this purpose, the applicable percentage is 40% for the period ending on the first anniversary of the date on which premium income is first received, 50% for the year ending on the second anniversary, 60% for the year ending on the third anniversary, 70% for the year ending on the fourth anniversary, and 80% thereafter. A segregated asset account will also be treated as a real property account on its first anniversary if on or before such first anniversary the issuer has stated in the contract or prospectus or in a submission to a regulatory agency, an intention that the assets of the account will be primarily invested in real property or interests in real property, provided that at least 40% of the total assets of the account are so invested within six months after such first anniversary.

(5) *Commodity.* The term "commodity" shall mean any type of personal property other than a security.

(6) *Security.* The term "security" shall include a cash item and any partnership interest registered under a Federal or State law regulating the offering or sale of securities. The term shall not include any other partnership interest, any interest in real property, or any interest in a commodity.

(7) *Interest in real property.* The term "interest in real property" shall include the ownership and co-ownership of land or improvements thereon and leaseholds of land or improvements thereon. Such term shall not, however, include mineral, oil, or gas royalty interests, such as a retained economic interest in coal or iron ore with respect to which the special provisions of section 631(c) apply. The term "interest in real property" also shall include options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

(8) *Interest in a commodity.* The term "interest in a commodity" shall include the ownership and co-ownership of any type of personal property other than a security, and any leaseholds thereof. Such term shall include mineral, oil, and gas royalty interests, including any fractional undivided interest therein. Such term also shall include any put, call, straddle, option, or privilege on any type of personal property other than a security.

(9) *Value.* The term "value" shall mean, with respect to investments for which market quotations are readily available, the market value of such investments; and with respect to other investments, fair value as determined in good faith by the managers of the segregated asset account.

(10) *Terms used in section 851.* To the extent not inconsistent with this paragraph (h) all terms used in this section shall have the same meaning as when used in section 851.

(i) *Effective date*—(1) *In general.* This section is effective for taxable years beginning after December 31, 1983.

(2) *Exceptions.* (i) If, at all times after December 31, 1983, an insurance company would be considered the owner of the assets of a segregated asset account under the principles of Rev. Rul. 81–225, 1981–2 C.B. 12, this section will not apply to such account until December 15, 1986.

(ii) This section will not apply to any variable contract to which Rev. Rul. 77–85, 1977–1 C.B. 12, or Rev. Rul. 81–225, 1981–2 C.B. 12, did not apply by reason of the limited retroactive effect of such rulings.

(iii) In determining whether a segregated asset account is adequately diversified for any calendar quarter ending before July 1, 1988, debt instruments that are issued, guaranteed, or insured by the United States or an instrumentality of the United States shall not be treated as government securities if such debt instruments are secured by a mortgage on real property (other than real property owned by the United States or an instrumentality of the United States) or represent an interest in a pool of debt instruments secured by such mortgages.

(iv) This section shall not apply until January 1, 1989, with respect to a variable contract (as defined in section 817(d)) that (1) provides for the payment of an immediate annuity (as defined in section 72(u)(4)); (2) was outstanding on September 12, 1986; and (3) the segregated asset account on which it was based was, on September 12, 1986, wholly invested in deposits insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

Lawrence B. Gibbs,

Commissioner of Internal Revenues.

Approved: January 26, 1989.

Dennis Earl Ross,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 89–4867 Filed 3–1–89; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Reimbursement of Children's Hospitals and Neonatal Services Under the CHAMPUS DRG-Based Payment System

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule amendment; change of effective date.

SUMMARY: This notice postpones the effective date for inclusion of children's hospitals and neonatal services under

the CHAMPUS DRG-based payment system until April 1, 1989.

EFFECTIVE DATE: The final rule published on December 16, 1989 (53 FR 50515) April 1, 1989 and applies to inpatient hospital admissions occurring on or after April 1, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Aurora, Colorado, 80045–6900, telephone (303) 361–4005.

SUPPLEMENTARY INFORMATION: The final rule published on December 16, 1988, (53 FR 50515) provided for inclusion of children's hospitals and neonatal services in the CHAMPUS DRG-based payment system effective for inpatient hospital admissions occurring on or after March 1, 1989. The actual weights and rates were not included in the final rule and will be published in a separate notice. As a result of unexpected delays and complications in calculating the weights and rates, we have decided to postpone implementation of these changes until April 1 so that hospitals can have adequate advance notice of the weights and rates. We expect to publish the weights and rates by the end of February.

Authority: 10 U.S.C. 1079; 1086; 5 U.S.C. 301.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 23, 1989.

[FR Doc. 89–4706 Filed 3–1–89; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–3504–1]

Mississippi State Oil & Gas Board; Underground Injection Control ("UIC") Primacy Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Final rule; approval of State program.

SUMMARY: The State Oil and Gas Board of Mississippi (the "Board") submitted an application under section 1425 of the Safe Drinking Water Act ("SDWA") for the approval of the UIC program governing Class II oil and natural gas related injection wells. After careful review of the application, the Agency has determined that the State's injection well program for Class II wells meets the requirements of the Act, and therefore approves it.

DATES: This approval shall become effective on March 2, 1989. The incorporation by reference of certain State statutes and regulations listed in the State Primacy Program is approved by the Director of the Federal Register effective March 2, 1989.

FOR FURTHER INFORMATION CONTACT: John K. Mason, Ground-Water Management Unit, Ground-Water Protection Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, Atlanta, Georgia 30365, (404) 347–3866. Copies of the Responsiveness Summary covering the public hearings are available at the above address.

SUPPLEMENTARY INFORMATION:

Background

Part C of the SDWA provides for a UIC program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a satisfactory demonstration that the State: (i) Has adopted, after reasonable notice and public hearings, an UIC program which meets the requirements of regulations in effect under section 1421 of the SWDA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. Section 1425 provides that for oil and gas-related injection control programs, the State may, in lieu of meeting the requirements under section 1422(b)(1)(A), demonstrate that the State program meets the requirements of section 1421(b)(1)(A)–(D) and represents an effective program to prevent underground injection which endangers drinking water sources. After reasonable opportunity for public comment, the Administrator shall be rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Mississippi was listed by EPA as needing an UIC program. The Board submitted an application under section 1425 on March 2, 1982 for the approval of an UIC program governing Class II oil and natural gas-related injection wells to be administrated by the Board. This application was determined to be inadequate and on December 1, 1983 was returned to the State. Effective December 30, 1984, EPA implemented a Federal UIC program for Class II wells in Mississippi. On December 21, 1987, the Board submitted a primacy application under section 1425 which was determined to be complete. On January 27, 1988, EPA published notice of its receipt of the application, requested public comments, and scheduled public hearings on the Mississippi UIC program submitted by the Board (53 FR 2238). Two public hearings were held on March 8, 1988 in Jackson, Mississippi. No comments were received opposing approval of the State's program.

Summary of Today's Action

After careful review of the application and comments received from the public, I have determined that the portion of the Mississippi UIC program submitted by the Board to regulate Class II injection wells, applicable on all lands in the State other than Indian lands, meets the requirements of section 1425 of the SDWA, and I hereby approve it. The effect of this approval is to establish this program under the SDWA for Class II wells on all non-Indian lands in the State of Mississippi.

This program replaces the existing EPA-administered program for all Class II wells (except on Indian lands). Now that EPA has determined that the State-administered program meets all applicable federal requirements, the Agency is withdrawing the EPA-administered program for Class II wells and establishing the State-administered program as the applicable UIC program in the State, except on Indian lands. EPA will continue to enforce the UIC program on Indian lands in Mississippi. See 53 FR 43080 for details.

This program approval will be codified in 40 CFR 147.1251. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. To the extent set forth in 40 CFR Part 144 and 40 CFR Part 146, these provisions incorporated by reference, as well as all permit conditions and permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA.

EPA shall continue to handle the enforcement actions on all wells, permitted or otherwise, which were under any active EPA enforcement action as of the date of this delegation. Wells for which a Notice of Violation has been issued will be considered to be under an active enforcement action. EPA shall continue with the enforcement actions on these wells until final resolution or until EPA determines

that adequate State enforcement is being taken.

Effective Date

Today's program approval is effective March 2, 1989. The State of Mississippi desires to begin issuing Class II UIC permits as soon as possible. EPA has received no comments opposing today's action. EPA does not believe any potential permittees will be prejudiced. Therefore, EPA believes good cause exists to making this rule effective upon publication. 5 U.S.C. 553.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under section 1425 of the SDWA of the application by the Board will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

List of Subjects in 40 CFR Part 147

Indian lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply, Incorporation by reference.

Dated: December 30, 1988.

John Moore,

Acting Administrator.

As set forth in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

The authority for Part 147 continues to read as follows:

Authority: 42 U.S.C. 300h *et seq.* and 42 U.S.C. 6901 *et seq.*

Supart Z—Mississippi

1. Section 147.1251 is revised to read as follows:

§ 147.1251 State—Administered Program—Class II Wells.

The UIC program for Class II wells in the State of Mississippi, other than those on Indian lands, is the program administered by the State Oil and Gas Board of Mississippi approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on March 2, 1989; the effective date of this program is March 2, 1989. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Incorporation by reference. The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Mississippi. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a).

(1) Mississippi Code Annotated, section 5–9–9 (Supp. 1988).

(2) Mississippi Code Annotated, sections 53–1–1 through 53–1–47, inclusive and sections 53–1–71 through 53–1–77, inclusive (1972 and Supp. 1988).

(3) Mississippi Code Annotated, sections 53–3–1 through 53–3–165, inclusive (1972 and Supp. 1988).

(4) State Oil and Gas Board Statewide Rules and Regulations, Rules 1 through 65, inclusive (Aug. 1, 1987, as amended, Sept. 17, 1987).

(b) The Memorandum of Agreement between EPA Region IV and the State Oil and Gas Board of Mississippi signed by the Regional Administrator on October 31, 1988.

(c) Statement of legal authority. Statement from the Attorney General signed on October 1, 1987 with amendments to the Statement signed August 5, 1988 and September 15, 1988 by the Special Assistant Attorney General.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

2. Section 147.1252 is amended by revising the section heading and adding text to read as follows:

§ 147.1252 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Mississippi is administered by EPA. The program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program on Indian lands is November 25, 1988.

§§ 147.1253 and 147.1254 [Removed]

3. Sections 147.1253 and 147.1254 are removed.

[FR Doc. 89–424 Filed 3–1–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 5

Criteria for Designation of Health Manpower Shortage Areas

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These final regulations revise the existing regulations governing the criteria for Designation of Health Manpower Shortage Areas, required by section 332 of the Public Health Service Act (the Act). This amendment revises the definition for the term "internees" used in the criteria for designating those Federal and State institutions which have a shortage of primary medical care, dental care, or psychiatric manpower.

EFFECTIVE DATE: These regulations are effective March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Richard C. Lee, Chief, Shortage Analysis Staff, Bureau of Health Care Delivery and Assistance, Parklawn Building Room 8–57, 5600 Fishers Lane, Rockville, Maryland 20857; telephone 301 443–6932.

SUPPLEMENTARY INFORMATION: On October 29, 1987, a Notice of Proposed Rulemaking (NPRM) to amend the existing regulations governing the criteria for Designation of Health Manpower Shortage Areas was published in the **Federal Register** (52 FR 41594) by the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary. The NPRM revises the definition for the term "internees" used in the criteria for designating medium to maxium security Federal and State correctional institutions and youth detention facilities that have a shortage of primary medical care, dental care, or psychiatric manpower.

The public comment period on the proposed regulations closed on December 28, 1987. The Department received nine letters. Seven of these were from State departments of correction; one was from the provider of medical services to correctional facilities of a major metropolitan area; and one was from a contractor that provides medical services in certain State correctional facilities. The

comments and the Department's responses to them are discussed below. For clarity, the comments and responses are arranged according to the issues to which they pertain.

Physician Visits Per Unit Time

One comment objected to the figure of 100 inmate visits per week as establishing unrealistically high expectation for physicians workload, i.e. underestimating staff needs. Another comment asserted that the proposed standards would generate unrealistically high medical staff requirements, which States would be unable to fund given the growth of prison populations. Other respondents stated that the new criteria are more realistic and equitable than the old.

The Department has retained these figures as proposed. The Secretary notes that the HMSA criteria in general and the correctional facility criteria in particular are not intended to take into account availability of funding; rather, their purpose is to accurately identify and quantify needs and shortages in order that Federal and State programs can target those resources that are available on the neediest areas, population groups and correctional facilities.

Time Devoted to Take Exams

One comment questioned the implied assumption that the time required to perform a complete intake examination is equivalent to that for a regular physician visit, stating that, "generally, thorough intake examinations require more time that other patient visits."

The Department does not disagree that the intake examination would require more time than a typical patient visit. However, as discussed in the preamble to the NPRM and acknowledged in some of the other comments received, much of the intake exam is typically performed by non-physician health professionals. The proposed criteria is based on the assumption that the physician's portion of the intake exam requires no more time than a patient visit, thus the Department has made final this criterion as proposed.

Reexaminations

One comment noted that "many facilities which house long-term inmates repeat complete examinations at annual or bi-annual intervals," and suggested that this be considered in the formula. The Secretary believes that the proposed criterion of five visits per year on the part of long-term inmates would adequately cover any reexaminations, and, therefore, has not accepted this comment.

Follow-up Care

One respondent asserted that the proposed criteria seem to assume higher requirements for health care providers at intake then subsequently, and that this conflicts with the respondent's experience, which indicates higher requirements for follow-up care due to chronic conditions identified in some inmates.

The Department notes that, in the case of primary care, the factors proposed assume that one follow-up visit occurs for every two new inmates. Thus, 100 new inmates will generate 50 follow-up visits. (This could mean that 50 of the new inmates have one follow-up visit each as a result of the intake exam, or that 25 have two follow-up visits each, or that 5 have 10 visits each.) The factors proposed also assume an additional 5 visits per year for long term inmates; clearly, inmates with chronic conditions would have more than 5 visits per year, but other inmates would have less. The factor of 5 visits per year is meant to be an average and has been made final as proposed.

Ratio for Primary Care Shortage

One comment specifically supported the use of the ratio 1000:1 for primary medical care, saying that this "has normally worked out in a real situation where 'pre-screening' is performed by another health professional." Another comment generally supported this and the other factors selected for primary medical care, but added "we do have institutions with health service missions where utilization of physicians may run higher," involving inmates with chronic health problems, and recommended a ratio closer to 750:1 for such institutions.

The Department has not developed a revised formula which would take into account the number of patients with chronic conditions, primarily because data were not available upon which to base such a revision but also because it is questionable whether these data would be uniformly available for all correctional institutions.

Use of Average Length-of-stay (ALOS) Factor

One comment pointed out that, in the equation defining internees for facilities with average length-of-stay (ALOS) specified as less than one year, ALOS should not be included as a factor modifying the average number of inmates in the equation's first term, since even when one inmate leaves during the year and is replaced by another, one averge inmate's full number of visits per year will still be generated (5 visits in the case of primary care). The Department agrees and will make this correction, deleting the factor ALOS in the first term.

The same respondent also recommended that the factor ALOS not be included in the equation's third term, which estimates the follow-up visits generated by intake exams, because such follow-up visits would occur soon after admission. The Department regards the use of the ALOS factor as appropriate in this third term since some facilities have such rapid turnover that time would not permit all the otherwise-expected follow-up visits to occur. Therefore, the factor ALOS has been retained in the equation's third term.

Use of Psychologists as Well as Psychiatrists

One commenter pointed out that psychologists as well as psychiartrists are used to provide mental health services. The Department recognizes this fact and will consider it when making future criteria revisions.

Dental Care Factors

One comment stated that the proposed correctional facility dental HMSA criteria understate typical needs, since most new inmates are in need of dental treatment, many having been to a dentist seldom if ever. This commenter proposed revising the factors used for defining internees in the dental care part of the criteria accordingly.

In the process of analyzing and responding to this comment, the Department found that the Proposed Rule had indicated an assumption that a dentist can handle 30 inmate visits or intake exams per week (or 1500 per year), but had used $k = \frac{1}{2}$ to represent this assumption in the formula. In fact, $k = 1$ is the correct factor to represent this assumption. Therefore, k for dental is being changed from ½ to 1 in the final version. This results in increasing the calculated dental needs, as the comments suggested. However, in order to avoid overestimating these needs, a partially compensating reduction in the factors b (intake exams) and c (follow-up exams) is also being made, setting $b = \frac{1}{3}$ and $c = \frac{2}{3}$.

Intake Psychiatric Exams/Psychological Testing

One respondent stated that, in his State's correctional facilities, new inmates are given a battery of psychological tests at intake but only those whose test results suggest a problem are seen by a psychiatrist. This might indicate that the factor b could be

set to equal to zero in the correctional facility HMSA criteria for psychiatry (i.e., no psychiatrists needed for intake exams), leaving the factor c (follow-up exams) to represent follow-up psychiatric visits based on the results of the testing.

While the Department had decided not to set b=0 in the final regulations, it has reduced b to ⅓ and c to ⅔ in the psychiatric internee formula. In addition, the Department has revised the normalization factor k for psychiatry from k=2 to k=1 to avoid overestimating needs.

Geographic Location of Prisons

One comment stated that the proposed criteria "fail to account for geographical location of institutions; their inaccessibility to health care professionals; and the hardship posed by physician coverage at one or more remotely-situated prison facilities providing in- and out-patient health care."

It is true that the correctional facility HMSA criteria do not take into account (and never have) whether the prison is located within a county or city which has an adequate physician supply. This consideration was not included because the HMSA criteria are for medium-to-maximum security prisons, which are thought of as self-contained, not interacting with the rest of the area where they are located. However, clearly prisons located in a well-served area rather than an isolated, remote one should find it easier to recruit physicians on contract. This fact is taken into consideration in making decisions about which HMSA-designated prisons will actually receive the limited number of National Health Service Corps (NHSC) physicians available for service in a given year.

Other Variables

One comment noted that the proposed criteria failed to consider specifically a number of different variables which relate to the provision of medical services in correctional facilities, e.g. the percentage of inmates over age 40; the percentage of inmates requiring chronic inpatient or outpatient care; and the percentage of inmates suffering from AIDS or other catastrophic illness. The high percentage of inmates with a history of intravenous drug abuse, leading both to the necessity for drug treatment and to increasing levels of AIDS infection in prisons, was also cited by another commenter. The Department recognizes that these are important variables, but did not have data on which to base their use in any formula, nor a model for relating these factors to the number of physicians or other health professionals required.

Litigation on Prison Health Care

One comment stated that "the proposed criteria ignore the frequency of litigation and stipulated settlement agreements at the Federal and State levels," and referred to physician-patient ratios and quality of care required by court rulings in such cases. The Department recognizes that court rulings may mandate a different level of care than that called for by the HMSA criteria. In such cases, the States involved (or the Federal government, if such a case were to involve a Federal prison) clearly will need to obtain the court-ordered number of health professionals. In those cases where the prison involved also meets the HMSA criteria, the Public Health Service may be able to assist in recruiting to the extent of the number needed under the HMSA criteria. However, the Department must continue to base its HMSA designation criteria exclusively upon objective data measuring the supply of health personnel, and will not revise the HMSA designation process based on legal settlements or judgments relating to particular prison health needs.

Restriction to Federal and State Correctional Facilities Only

One comment objected to the restriction of these criteria to Federal and State correctional facilities only, given that some such facilities serving major metropolitan areas in fact operate in lieu of State (and perhaps Federal) facilities. The Department recognizes this problem and will consider case-by-case exceptions for large correctional facilities in major metropolitan areas.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this amendment to the regulations does not have a significant economic impact on a substantial number of small entities; it primarily affects the way correctional institution populations are counted to allow more accurate calculation of the need for health care practitioners under the existing HMSA designation process. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required. Further, this rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that the rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

There are no information collection requirements in this regulation.

List of Subjects in 42 CFR Part 5

Dental health, Health, Health professions, Mental health, Physicians, Public health, Rural areas.

Accordingly, 42 CFR Part 5 is amended as follows.

Dated: November 29, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: December 30, 1988.

Otis R. Bowen,

Secretary.

PART 5—DESIGNATION OF HEALTH MANPOWER SHORTAGE AREAS—[AMENDED]

1. The authority citation for Part 5 continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); Sec. 332 of the Public Health Service Act, 90 Stat. 2770–72 (42 U.S.C. 254e).

Appendix A to Part 5—[Amended]

2. Appendix A (Criteria for Designation of Primary Care HMSAs), Part III (Facilities), paragraph A is revised to read as follows:

A. *Federal and State Correctional Institutions.*

1. *Criteria.*

Medium to maximum security Federal and State correctional institutions and youth detention facilities will be designated as having a shortage of primary medical care manpower if both the following criteria are met:

(a) The institution has at least 250 inmates.

(b) The ratio of the number of internees per year to the number of FTE primary care physicians serving the institution is at least 1,000:1.

Here the number of internees is defined as follows:

(i) If the number of new inmates per year and the average length-of-stay are not specified, or if the information provided does not indicate that intake medical examinations are routinely performed upon entry, then—Number of internees=average number of inmates.

(ii) If the average length-of-stay is specified as one year or more, and intake medical examinations are routinely performed upon entry, then—Number of internees=average number of inmates+(0.3)×number of new inmates per year.

(iii) If the average length-of-stay is specified as less than one year, and intake examinations are routinely performed upon entry, then—Number of internees=average number of inmates+(0.2)×(1+ALOS/2)×number of new inmates per year where ALOS=average length-of-stay (in fraction of year). (The number of FTE primary care

physicians is computed as in Part I, Section B, paragraph 3 above.)

2. Determination of Degree of Shortage.

Designated correctional institutions will be assigned to degree-of-shortage groups based on the number of inmates and/or the ratio (R) of internees to primary care physicians, as follows:

Group 1—Institutions with 500 or more inmates and no physicians.

Group 2—Other institutions with no physicians and institutions with R greater than (or equal to) 2,000:1.

Group 3—Institutions with R greater than (or equal to) 1,000:1 but less than 2,000:1.

Appendix B to Part 5—[Amended]

3. Appendix B (Criteria for Designation of Dental Care HMSAs), Part III (Facilities), paragraph A is revised to read as follows:

A. *Federal and State Correctional Institutions.*

1. *Criteria*

Medium to maximum security Federal and State correctional institutions and youth detention facilities will be designated as having a shortage of dental manpower if both the following criteria are met:

(a) The institution has at least 250 inmates.

(b) The ratio of the number of internees per year to the number of FTE dentists serving the institution is at least 1,500:1.

Here the number of internees is defined as follows:

(i) If the number of new inmates per year and the average length-of-stay are not specified, or if the information provided does not indicate that intake dental examinations are routinely performed by dentists upon entry, then—Number of internees = average number of inmates.

(ii) If the average length-of-stay is specified as one year or more, and intake dental examinations are routinely performed upon entry, then—Number of internees = average number of inmates + number of new inmates per year.

(iii) If the average length-of-stay is specified as less than one year, and intake dental examinations are routinely performed upon entry, then—Number of internees = average number of inmates + $\frac{1}{3} \times [1 + (2 \times \text{ALOS})] \times$ number of new inmates per year where ALOS = average length-of-stay (in fraction of year).

(The number of FTE dentists is computed as in Part I, Section B, paragraph 3 above.)

2. Determination of Degree of Shortage.

Designated correctional institutions will be assigned to degree-of-shortage groups based on the number of inmates and/or the ratio (R) of internees to dentists, as follows:

Group 1—Institutions with 500 or more inmates and no dentists.

Group 2—Other institutions with no dentists and institutions with R greater than (or equal to) 3,000:1.

Group 3—Institutions with R greater than (or equal to) 1,500:1 but less than 3,000:1.

Appendix C to Part 5—[Amended]

4. Appendix C (Criteria for Designation of Psychiatric HMSAs), Part III (Facilities), paragraph A is revised to read as follows:

A. Federal and State Correctional Institutions

1. Criteria.

Medium to maximum security Federal and State correctional institutions and youth detention facilities will be designated as having a shortage of psychiatric manpower if both of the following criteria are met:

(a) The institution has more than 250 inmates, and

(b) The ratio of the number of internees per year to the number of FTE psychiatrists serving the institution is at least 1,000:1.

Here the number of internees is defined as follows:

(i) If the number of new inmates per year and the average length-of-stay are not specified, or if the information provided does not indicate that intake psychiatric examinations are routinely performed upon entry, then—

Number of internees = average number of inmates

(ii) If the average length-of-stay is specified as one year or more, and intake psychiatric examinations are routinely performed upon entry, then—

Number of internees = average number of inmates + number of new inmates per year

(iii) If the average length-of-stay is specified as less than one year, and intake psychiatric examinations are routinely performed upon entry, then—

Number of internees = average number of inmates + $\frac{1}{3} \times [1 + (2 \times \text{ALOS})] \times$ number of new inmates per year

where ALOS = average length-of-stay (in fraction of year) (The number of FTE psychiatrists is computed as in Part I, Section B, paragraph 3 above.)

2. Determination of Degree of Shortage.

Designated correctional institutions will be assigned to degree-of-shortage groups, based on the number of inmates and/or the ratio (R) of internees to FTE psychiatrists, as follows:

Group 1—Institutions with 500 or more inmates and no psychiatrist.

Group 2—Other institutions with no psychiatrists and institutions with R greater than (or equal to) 3,000:1.

Group 3—Institutions with R greater than (or equal to) 2,000:1 but less than 3,000:1.

[FR Doc. 89-4922 Filed 3-1-89; 8:45 am]

BILLING CODE 4160-15-M

Health Care Financing Administration

42 CFR Parts 433 and 435

[BQC-071-IFC]

Medicaid Program; Targeting Information for Income and Eligibility Verification Systems

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This rule revises regulations text that is now obsolete because of section 9101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509); this section allows State Medicaid Agencies flexibility to use selectively (target) certain information about a Medicaid recipient's income obtained through their income and eligibility verification systems (IEVS). In addition, this rule implements a congressional directive to revise the timeliness standards for use of IEVS information to grant States more time to obtain and use the data.

EFFECTIVE DATE: These regulations are effective April 3, 1989. They are being issued in final for the reasons explained in Waiver of Proposed Rulemaking in the Supplementary Information section below. However, we will consider any comments received by May 1, 1989 and revise the regulations as necessary. In order for comments to be considered, we must receive them at the appropriate address, as provided below, no later than 5:00 p.m. on May 1, 1989. Sections 435.945 and 435.953, however, contain information collection requirements subject to Office of Management and Budget clearance. We will publish a notice in the **Federal Register** after we receive that Office's clearance.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BQC-71-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BQC-71-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-254-7890).

FOR FURTHER INFORMATION CONTACT: Elliot Naide, (301) 966-5920.

SUPPLEMENTARY INFORMATION:

A. Background

On April 1, 1985, section 1137 of the Social Security Act (the Act) was

established with provisions aimed at ensuring that various Federally-funded welfare agencies, including the Aid to Families with Dependent Children, the Food Stamp and Medicaid programs, furnish benefits to only those individuals who are eligible for them. (Section 2651 of Pub. L. 98–369). Section 1137 requires the agencies administering these programs to have an income and eligibility verification system (IEVS) for exchanging with each other information that may be of use in establishing or verifying eligibility or benefit amounts. The provision mandated that the agencies target the use of the information to the uses most likely to be productive in identifying and preventing ineligibility and incorrect payments.

On February 28, 1986, HCFA, the Food and Nutrition Service and the Family Support Administration published jointly a final rule (51 FR 7178) to implement the IEVS for the Medicaid, Food Stamp and AFDC programs. The rule required agencies that administer these programs to review and compare all information received against the case file to determine whether it affects the applicant's or recipient's eligibility or benefits. The regulations also require the agency to initiate a case action, or make an entry in the case record that no action is necessary, within 30 days of receipt of the infomation for 80 percent of the determinations.

The reasoning behind requiring use of all information was twofold:

(1) The agencies are responsible for ensuring that all determinations are correct and we believed that by requiring the use of the largest number of data items available we might reduce errors; and

(2) We anticipated that under any circumstances an agency would exclude an item of information that was obviously erroneous or useless in the eligibility determination.

HCFA's regulations on IEVS in general are found at 42 CFR Part 435, Subpart J; § 435.952 specifically concerns the use of data.

B. Legislation

After the three agencies jointly published the final rules, the Budget Committee of the House of Representatives in its report accompanying H.R. 5300 (which was the basis for the Omnibus Reconciliation Act of 1986) noted that the agencies' current rules do not permit targeting in the manner it said it intended to allow in the original statute (H.R. Rep. No. 727, 99th Cong., 2d. Sess. 424–425 (1986)). According to this 1986 report, it was the original intent of the House Budget Committee to have States utilize a variety of information sources to verify the eligibility of applicants and recipients of benefit programs, as an effective and efficient tool in preventing benefit payments from being made to individuals who are not eligible. The report states that the Committee believed that for the use of such information to be productive, States must be afforded the discretion to target their efforts in ways they determine most cost-effective. To require a follow up in all cases where any income is indicated "was not what was intended by Congress and would result in an unnecessary and costly administrative burden on the States". (H.R. Rep. No. 727, 99th Cong., 2d Sess. 424 (1986)).

To ensure that the required matches are cost-effective verification processes, the Committee indicated that the States should be allowed to arrange the follow up of case records based on match findings in order of importance. For example, following up on individuals whose unearned income exceeds certain tolerance levels is more efficient than verifying every case with unearned income.

In addition, the Committee stated its belief that requiring States to act upon the information they receive within 30 days, as prescribed in the final rule, is unrealistic. "States have a finite amount of administrative resources, and are dependent upon the actions of others outside the agency as well as the mail system to carry out their duties. For this reason, the Committee believes a 45-day requirement is more reasonable than the 30 days set forth in the final rule. The allowance that action can be delayed further on up to 20 percent of the information items when collateral verification sources are required—as provided in the final rules—should be retained." (H.R. Rep. No. 727, 99th Cong., 2d Sess. 425 (1986)).

In section 9101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), Congress amended section 1137 (a)(4) of the Act to prohibit the Secretary from requiring States to use the information they receive because of the IEVS to verify the eligibility of all recipients. The House Budget Committee's directive to allow the public assistance agencies 45 days to act upon information received was not included as a legislative amendment, however.

C. Revisions to the Regulations

In order to bring the regulations into conformity with the amendment to section 1137 of the Act made by Pub. L. 99–509, and to follow clearly expressed congressional intent on the time period for acting upon information received, we are amending our regulations at 42 CFR Part 435, Subpart J.

1. Targeting the Use of Information

We are adding a new § 435.953 to reflect existing law (section 1137(a)(4) of the Act) to provide that all information received through the IEVS on recipients need not be used but that its use may be targeted.

The revised regulations reflect amendments to section 1137(a)(4) of the Act, which permit each State agency to review and compare against the case file (follow up) all information items or to target, for each data source, those information items that are likely to be productive in identifying and preventing ineligibility and incorrect payments.

Any agency that intends to exclude items from follow-up must submit a follow-up plan that specifies the categories to be excluded and provides a description of the criteria defining each category. For each category, the agency must provide a reasonable justification explaining why the follow-up would not be cost-effective. A formal cost-benefit analysis is not required. An agency may find it preferable to base its justifications on the general experience of its program in following up on specific categories of information.

Restriction to recipients

Under our current rules at 42 CFR § 435.948, State agencies were required to use all information concerning both applicants and recipients.

In providing that State agencies are allowed to target information, the amendment to section 1137(a)(4) of the Act refers to "recipients" only. Our current regulations requiring the use of information on all applicants and recipients have thus been superseded with respect to recipients only. Therefore, we are revising the regulations to permit targeting to be used only for recipients. When the agency receives information on applicants whom it has not yet determined eligible, the match data continues to be, as under existing regulations, not subject to targeting.

We carefully considered proposing to revise our existing regulations to permit targeting of applicants, but we have decided at this time simply to revise the regulations to bring the text into conformity with the new statutory language that already legally governs targeting in the case of recipients. We believe it is not in the best interest of the program to revise the existing requirement that information on all applicants be used. The application period is particularly important in that

the State agency conducts an intensive review of all of the factors of the applicant's eligibility, including the economic circumstances of the household. Following an initial eligibility determination, periodic redeterminations of recipients tend to be somewhat less intensive with questions concentrating on whether a change in circumstances has occurred in the past few months or is expected to occur in the next few months. Moreover, redeterminations may be conducted by telephone or mail or in group interviews. The application process is therefore more crucial to the integrity of the program and all information items must be pursued and resolved to the extent possible before authorization of assistance. However, as currently required by § 435.911, State agencies may not delay a pending application solely to await IEVS information if other evidence establishes the individual's eligibility for assistance. Information the agency requests on an applicant that it receives after it authorizes assistance is considered to be information received on a recipient and may therefore be targeted under section 1137(a)(4) of the Act and under these regulations.

These regulation revisions do not affect the requirement that State agencies request information on all recipients from the required sources but merely concern targeting the use of data received in response to the request.

These changes, as do the current regulations, apply only in those situations for which the Medicaid agency makes the eligibility determination. For Medicaid recipients eligible because they receive AFDC assistance, the AFDC IEVS requirements already apply. For aged, blind or disabled Medicaid recipients receiving SSI payments, the Medicaid IEVS requirements apply only if such recipients' Medicaid eligibility is not determined by the Social Security Administration (SSA) pursuant to section 1634 of the Social Security Act (see § 435.909).

2. Timeframe for Action on Match Results

These regulations also provide in § 435.952 a 45-day period for following up on information items, instead of the current 30 days; this policy would implement the directive contained in the report of the House Budget Committee. This is a maximum time period and does not preclude a State agency from setting shorter timeframes for acting on information items from a particular data base. For example, information items showing unreported UIB might be given priority over other information and be looked at immediately.

The provision that allows a 20 percent allowance for action on information items in which third party information is late remains the same as stated in § 435.952(e) and applies also to targeted data since targeting will not have any effect on the responsiveness of third parties.

3. Quality Control Requirements

The current rule at § 435.952 clearly states that the requirements of this section do not relieve the agency of its responsibility for determinations of erroneous payments or the agency's liability for those erroneous payments. In order to clarify that the agency is liable even for items not followed up, we are amending § 435.945. General requirements, by adding paragraph (h) to require the State agencies to retain records of all the information items received, including those not followed up. The agency will, as now, have to retain information in a manner that assures that it does not compromise information safeguards; the agency must make this information available to quality control reviewers upon request.

4. Third Party Liability

Targeting does not apply to activities for establishing third party liability benefit amounts. Section 1902(a)(25) of the Act requires that State agencies or local Medicaid agencies take all reasonable measures to ascertain the legal liability of third parties to pay for care and services provided to Medicaid recipients. Every employment lead, no matter how small, could potentially be a lead for health insurance.

5. Technical Changes

We are making three technical changes to § 435.952. In paragraph (a), by cross reference, we incorporate the change that permits State agencies to limit review and comparison of information to targeted information. In paragraph (c) we reflect the correct order the State agency must follow when processing a recipient's case file under IEVS. Finally, in paragraph (e), we extend to 45 days the timeframe that a State agency may delay action for up to 20 percent of items and limit the items to those on which it requested verification timely, instead of all items of information received.

We are also changing § 433.138(g)(1)(i). We are revising the timeframe for followup for TPL purposes from 30 to 45 days to make it consistent with the timeframe for IEVS followup. We are retaining the provision for delayed action beyond 45 days in 20 percent of the information items when the agency does not receive requested verification.

D. Impact Analysis

1. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect that the net effect of the targeting requirement reflected in these regulations will be to reduce State agency costs since they will not have to follow up on all data. State agencies will be able to target their follow up activities on matched data that, for example, exceed certain tolerance levels because it would not be cost-effective to follow up on matched data below those levels. The extension from 30 to 45 days of the time permitted for follow up also will reduce the pressure placed on State administrative resources. For these reasons, we have determined that no threshold criteria under E.O. 12291 are met. Therefore, a regulatory impact analysis is not required.

2. Regulatory Flexibility Act

We generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, State agencies are not small entities. We have determined, and the Secretary certifies, that this final rule does not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

E. Paperwork Reduction Act

Sections 435.945 and 435.953 of this rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980. State agencies

must be able to document that they received information for data matches from all sources for quality control purposes and, if they do not intend to follow up on a category or categories of information, they must submit a plan to the Secretary justifying the exclusion as cost-effective. The reporting burden for the information collections in § 435.945 is estimated to be 432 hours annually for a maximum of 54 States and jurisdictions. The reporting burden for the information collections in § 435.953 is estimated to be 40 hours per response for a maximum of 54 States and jurisdictions for a one-time total estimated burden of 2,160 hours. (We are assuming a one-time response from all States and jurisdictions for this estimate with no revised follow-up plans. However, some States and jurisdictions may submit no plan; others may revise theirs frequently.)

A notice will be published in the **Federal Register** when the OMB approval is obtained. Organizations and individuals desiring to submit comments on the information collection requirements should follow the directions in the address section within 30 days after publication of this rule.

Section 435.952 of this rule also contains information collection requirements that are subject to the OMB review. These requirements were approved by that Office on April 11, 1986 in accordance with the Paperwork Reduction Act. The approval number is 0938–0467 and the approval expires April 30, 1989. HCFA is requesting an extension of this approval for an additional 3 years.

F. Waiver of Proposed Rulemaking

Generally, we publish a notice of proposed rulemaking in the **Federal Register** and afford public comment before issuing a final rule. However, if adherence, to these procedures would be impracticable, unnecessary or contrary to the public interest, we may waive the procedures.

This interim final rule with comment period simply revises the text of existing regulations to bring them into conformity with statutory requirements and clearly expressed congressional intent without interpretation. With respect to the provisions permitting targeting of information on recipients, the revisions in these regulations have no substantive effect, as section 1137(a)(4) already requires that such targeting be permitted, even though the text of the existing regulations provides otherwise.

Therefore, the Secretary finds good cause that issuing a notice of proposed rulemaking before these final rules is unnecessary and contrary to the public interest.

G. Response to Comments

Because of the large number of items of correspondence we normally receive on rules requesting public comment, we are not able to acknowledge or respond to them individually.

However, we will consider all comments that we receive by the date and time specified in the **"DATE"** section of this preamble, and, if we revise this final rule, we will respond to the comments in the preamble of that revised rule.

H. List of Subjects

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Chapter IV, Subchapter C is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

* * * * *

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

* * * * *

A. Part 433 is amended as set forth below:

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1320b–7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r) and 1396k, unless otherwise noted.

§ 433.138 [Amended]

2. In paragraph (g)(1)(i) of § 433.138, "30 days" is revised to read "45 days".

B. Part 435 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents is amended by adding a new § 435.953 to read as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS AND AMERICAN SAMOA

* * * * *

Subpart J—Eligibility in the States and District of Columbia

* * * * *

§ 435.953 Identifying items of information to use.

* * * * *

3. In § 435.945, paragraph (a) is revised and paragraph (h) is added as follows:

§ 435.945 General requirements.

(a) The agency must request and use information timely in accordance with §§ 435.948, 435.952, and 435.953 of this subpart for verifying Medicaid eligibility and the amount of medical assistance payments.

* * * * *

(h) The agency must retain a record of all information items received, including those not followed up, and make the records available for quality control review purposes.

4. Section 435.952, paragraphs (a) and (c) through (e) are revised to read as follows:

§ 435.952 Use of information.

(a) Except as provided under § 435.953 of this subpart, the agency must review and compare against the casefile all information received under §§ 435.940 through 435.960 to determine whether it affects the applicant's or recipient's eligibility or amount of medical assistance payment. The agency must also verify the infomation if determined appropriate by agency experience or if required by § 435.955.

* * * * *

(c) Except as specified in § 435.953 of this subpart and paragraph (d) of this section, for recipients, the agency must, within 45 days of receipt of an item of information, request verification (if appropriate), determine whether the information affects eligibility or the amount of medical assistance payment, and either initiate a notice of case action to advise the recipient of any adverse action the agency intends to take or make an entry in the casefile that no further action is necessary.

(d) Subject to paragraph (e) of this section, if the agency does not receive requested third party verification within the 45-day period after receipt of information, the agency may determine whether the information affects eligibility or correct amount of medical

assistance payment after the 45-day period. However, the agency must make any delayed determinations permitted under this paragraph—

(1) Promptly, as required by § 435.916, if the verification is received before the next redetermination; or

(2) In conjunction with the next redetermination if no verification is received before that redetermination.

(e) The number of determinations delayed beyond 45 days from receipt of an item of information (as permitted by paragraph (d) of this section) must not exceed twenty percent of the number of items of information for which verification was requested.

* * * * *

5. A new § 435.953 is added to read as follows:

§ 435.953 Identifying items of information to use.

(a) With respect to information received on recipients under §§ 435.940 through 435.960, the agency may either review and compare against the case file all items of information received or it may identify (target) separately for each data source the information items that are most likely to be most productive in identifying and preventing ineligibility and incorrect payments.

(b) An agency that wishes to exclude categories of information items must submit for the Secretary's approval a follow-up plan describing the categories that it proposes to exclude. For each category, the agency must provide a reasonable justification that follow-up is not cost-effective; a formal cost/benefit analysis is not required.

(c) If an agency receives an item of unemployment compensation information from the Internal Revenue Service or earnings information from SSA that duplicates an item of information previously received from another source and followed up, the agency may exclude that information item without justification.

(d) An agency may submit a follow-up plan or alter its plan at any time by notifying the Secretary and submitting the necessary justification. The Secretary approves or disapproves categories of items to be excluded under the plan within 60 days of its submission. The categories approved by the Secretary constitute an approved agency follow-up plan for IEVS.

(Catalog of Federal Domestic Assistance Programs No. 13.714, Medical Assistance).

Dated: October 15, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 21, 1988.

Otis R. Bowen,

Secretary, Department of Health and Human Services.

Note: This regulation is being submitted to the Office of the Federal Register today February 27, 1989 for publication.

[FR Doc. 89-4894 Filed 3-1-89; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-146; RM-6048]

Radio Broadcasting Services; Osceola, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C for Channel 251C2 at Osceola, Arkansas, and modifies the Class C2 license of The Dittman Group, Inc. for Station KMPZ(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 251C at Osceola are 35-28-02 and 90-11-27. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 10, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-146, adopted February 3, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by revising the entry for Osceola by deleting Channel 251C2 and adding Channel 251C.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-4880 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-155; RM-6149]

Radio Broadcasting Services; Pentwater, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 231A to Pentwater, Michigan, in response to a petition filed by James J. McCluskey. Channel 231A can be allotted to Pentwater consistent with the Commission's spacing requirements. The coordinates for Channel 231A are 43-46-30 and 86-26-24. With this action, this proceeding is terminated.

DATES: Effective April 10, 1989; The window period for filing applications will open on April 11, 1989, and close on May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-155, adopted January 31, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Michigan is amended by adding Channel 231A at Pentwater.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-4877 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-188; RM-6287]

Radio Broadcasting Services; Lawton, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Broadco of Texas, Inc., allots Channel 258C2 to Lawton, Oklahoma, and modifies its license for Station KMGZ to specify operation on the higher powered channel. Channel 258C2 can be allotted to Lawton with a site restriction of 13.2 kilometers (8.2 miles) east to avoid a short-spacing to Station KBOG, Channel 257A, Cordell, Oklahoma. The coordinates for the allotment are North Latitude 33-34-43 and West Longitude 98-16-25. At the request of Mark Norman and Cameron University, we are also retaining Channel 237A at Lawton but not reserving it for noncommercial educational use as requested by Cameron. Channel 237A can be allotted to Lawton without the imposition of a site restriction. The coordinates for this allotment are North Latitude 34-36-42 and West Longitude 98-24-42. With this action, this proceeding is terminated.

DATES: Effective April 10, 1989. The window period for filing applications for Channel 237A at Lawton will open on April 11, 1989, and close on May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-188, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oklahoma is amended by revising the entry for Lawton by adding Channel 258C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-4882 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-33; RM-6156, RM-6428]

Radio Broadcasting Services; Austin, TX et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 272C2 for Channel 272A at Austin, Texas, and modifies the license of Station KPEZ(FM) to specify operation on the higher class co-channel, at the request of Clear Channel Communications, Inc. In addition, in order to accomplish the Austin substitution, Channel 223A is substituted for Channel 272A at Yoakum, Texas, and the license of Station KYOC(FM) is modified accordingly. In addition, this action allots Channel 260A to Hallettsville, Texas, as a first local FM service at the request of Fred Lundgren. Channel 272C2 at Austin requires a site restriction of 13.0 kilometers (8.1 miles) southwest of the city, at coordinates 30-11-53 and 97-50-06. Channel 223A at Yoakum requires a site restriction of 11.1 kilometers (6.9 miles) northwest of the city, at coordinates 29-20-29 and 97-14-54. A site restriction of 11.5 kilometers (7.2 miles) east of Hallettsville is required for Channel 260A, at coordinates 29-25-46 and 96-49-25. Concurrence of the Mexican government has been obtained. With this action, this proceeding is terminated.

DATES: Effective April 10, 1989; The window period for filing applications on Channel 260A at Hallettsville, Texas, will open on April 11, 1989, and close on May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-33, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by adding Channel 272C2 and deleting Channel 272A at Austin; by adding Channel 223A and deleting Channel 272A at Yoakum; and by adding Hallettsville, Channel 260A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-4881 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-492; RM-6414]

Radio Broadcasting Services; Borger, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 282C1 for Channel 282C at Borger, Texas, and modifies the station's license to reflect operation on the new class, at the request of William H. Sanders. A site restriction of 37.1 kilometers (23.0 miles) southwest of the city has been requested utilizing coordinates 35-23-17 and 101-38-10.

With this action, this proceeding is terminated.

EFFECTIVE DATE: April 10, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–492, adopted January 31, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by deleting Channel 282C and adding Channel 282C1 at Borger.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–4878 Filed 3–1–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–312; RM–6127 & RM–6135

Radio Broadcasting Services; Pearl and Magee, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 230A to Magee, Mississippi, in response to a petition filed by Airwaves Company. The coordinates for Channel 230A at Magee are 31–52–18 and 89–43–54. Colon Johnson filed a conflicting petition in this proceeding requesting the allotment of Channel 230A to Pearl, Mississippi. However, since no supporting comments have been received for a channel at Pearl, we shall dismiss the petition for lack of interest.

DATES: Effective April 10, 1989. The window period for filing applications for Channel 230A at Magee, Mississippi, will open on April 11, 1989, and close on May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket 88–312, adopted February 3, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi is amended by adding Channel 230A at Magee.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–4879 Filed 3–1–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–7; FCC 88–407]

Broadcast Services; Amendment of the Radio-TV Cross-Ownership Rule, Section 73.3555 of the Commission's Rules and Regulations, to Liberalize the Commission's Waiver Policy With Respect to the Common Ownership of a Radio-TV Station Combination in the Same Market

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 12, 1988, the Commission adopted amendments to the radio-TV cross-ownership rule contained in § 73.3555(b) of the Commission's Rules and Regulations. Specifically, the Commission adopted a new waiver policy under which it will look with favor upon waiver applications involving either (1) stations in the top 25 ADI television markets where there will be 30 separate broadcast licensees or "voices" after the combination, or (2) "failed" stations that have not been operated for a substantial period of time or that are involved in bankruptcy proceedings; all other applications will be examined on a more rigorous case-by-case basis. The Commission will not grant any application under this policy, however, if the proposed combination would result in any one entity holding an attributable interest in more than one AM and FM radio station within any single television "metro" market, as defined by Arbitron Ratings Company.

EFFECTIVE DATE: March 31, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michele Farquhar, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision in MM Docket No. 87–7, adopted December 12, 1988 and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Decision

1. This decision relaxes one of the Commission's local ownership rules—the radio-TV cross-ownership rule, which prohibits the common ownership of radio and television stations in the same television market. Although the Commission is retaining the rule, it is adopting a waiver policy under which it will look with favor upon waiver requests when certain specific criteria are met. First, the Commission will tend to look favorably upon waiver applications involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees or "voices" after the proposed merger. Second, it will also look favorably upon requests involving "failed" stations that have not been operated for a substantial period of time or that are involved in bankruptcy proceedings. All other waiver applications will be examined on a more rigorous case-by-case basis which will

place particular emphasis on the potential benefits of the combination, the types of facilities involved, the number of stations already owned by the applicant, the financial difficulties of the station(s), and the nature of the market in light of diversity and competition concerns. Under this new waiver policy, however, the Commission will not grant any application if the proposed combination would result in any one entity holding an attributable interest in more than one AM and one FM radio station within any single television "metro" market, as defined by Arbitron Ratings Company.

2. The radio-TV cross-ownership rule was adopted in 1970 in order to promote the dual goals of economic competition and viewpoint diversity in the ownership of broadcast stations. The *Notice of Proposed Rule Making* in this proceeding proposed relaxing both the radio-TV cross-ownership and the radio "duopoly" rules to reflect the tremendous growth in the number and types of media outlets in large and small markets in the 18 years since the rules were last examined by the Commission. Based on the record in this proceeding and the overwhelming support of the comments received, the Commission voted to relax the duopoly rule to a principal-city contour standard on October 27, 1988. The commenters also agreed overwhelmingly with the Commission's initial determination that the radio-TV cross-ownership rule should be liberalized given the increased availability of media outlets in markets of all sizes and the benefits of common station ownerships.

3. In particular, the commenters submitted evidence that substantial economies of scale and cost savings could result from joint station ownership, which in turn would benefit the public by permitting broadcasters to invest more money and other resources into better and more diverse programming. Specifically, many agreed that efficiencies inherent in joint ownership might lead to more news and public affairs programming, a greater diversity of program formats, and better technical facilities, and could enable struggling radio and television stations to remain on the air. Furthermore, data and studies submitted in this proceeding indicated that relaxing the rule is unlikely to affect economic competition adversely.

4. In an abundance of caution, however, the Commission decided to retain the rule for all markets and adopt a new, more relaxed case-by-case waiver policy for all potential radio-TV combinations. Under this policy, the Commission will look with favor upon waiver requests that meet either of two standards and will review all other applications based upon certain specified public interest criteria. These new waiver standards would replace the current exception for radio-UHF television station combinations in Note 4 of § 73.3555, so that these combinations would now be evaluated under the same public interest criteria as all other prospective combinations. These amendments to § 73.3555 will become effective March 31, 1989.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Rule Amendments

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.3555 is amended by deleting the fifth and sixth sentences of Note 4 which begin with the words "This section" and end with the words "public interest" and adding a new Note 7, which reads as follows:

§ 73.3555 Multiple ownership.

* * * * *

Note 7: The Commission will entertain requests to waive the restrictions of paragraph (b) of this section on a case-by-case basis. The Commission will look favorably upon waiver applications that meet either of the following two standards: (1) Those involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees after the proposed combination, as determined by counting television licensees in the relevant ADI television market and radio licensees in the relevant television metropolitan market; or (2) those involving "failed" broadcast stations that have not been operated for a substantial period of time, *e.g.*, four months, or that are involved in bankruptcy proceedings. For the purposes of determining the top 25 ADI television markets, the relevant ADI television market, and the relevant television metropolitan market for each prospective combination, we will use the most recent *Arbitron Ratings Television ADI Market Guide*. We will determine the number of radio stations in the relevant television metropolitan market and the number of television licensees within the relevant ADI television market based on the most recent Commission ownership records. Other waiver requests will be evaluated on a more rigorous case-by-case basis, as set forth in the *Second Report and Order* in MM Docket No. 87–7, FCC 88–407, released February 23, 1989. In implementing this new waiver policy, we will not grant any application if the proposed combination would result in any one entity holding an attributable interest in more than one AM and FM station within any single television metropolitan market.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–4883 Filed 3–1–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 80

[FCC 89–26]

Maritime Services; Amendment to Permit Additional Use of VTS Channels in the Port Areas of New York and New Orleans

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules for Vessel Traffic Services (VTS) systems for the port areas of New York and New Orleans. Effective July 30, 1988, the United States Coast Guard discontinued its VTS operations in these two port areas. This Order permits use of the affected VHF channels in these port areas by eligible users for other than VTS operations, pending possible future use for VTS communications.

EFFECTIVE DATE: March 2, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Aviation & Marine Branch, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, adopted January 27, 1989, and released February 15, 1989. The complete text of this Commission action, including the rule amendment, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this action, including the rule amendment, may also be purchased from the Commission's copy contractor, International Transcription Services,

(202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Order

1. The maritime services rules have been amended to allow Vessel Traffic Services (VTS) channels in the port areas of New York and New Orleans, LA, to be used by eligible users for other than VTS operations, pending possible future use for VTS communications.

2. Operated by the United States Coast Guard (Coast Guard), VTS systems are ship movement reporting systems designed to prevent damage to ships, bridges, and other structures in U.S. navigable waters. VTS systems are also used to minimize environmental damage associated with navigational accidents. Effective July 30, 1988, the Coast Guard discontinued its VTS systems for the port areas of New York and New Orleans, leaving VHF marine channels 11 and 14 in New York, and channels 11, 12, and 14 in New Orleans, idle.

3. The Commission noted that allowing the above frequencies to be used for other purposes instead of remaining idle would increase spectrum efficiency and help satisfy the demand for maritime frequencies in these two port areas. The Commission's action allows eligible users in the two port areas to be licensed to use channel 11 for commercial communications and channels 12 and 14 for port operations communications, with one exception: the Coast Guard retains channel 12 in New York for anchorage management services that have continued despite the closing of the New York VTS system.

4. The Commission recognized that the Coast Guard acted due to budgetary constraints, and that re-establishment of one or both of the two VTS systems is a possibility. The Commission therefore ordered that licenses granted under the Order be granted only on a provisional basis, contingent on a continuation of Coast Guard policy. The Commission may thus require operations pursuant to such conditional licenses to cease upon notification to the licensee, or may choose not to renew such licenses, if VTS systems for the port areas of New York and New Orleans are re-established.

5. The amended rule is set forth at the end of this document.

6. The rule amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to contain no new or modified form, information collection or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

7. Because the Commission found that the rule amendment contained herein constitutes a minor amendment to the Commission's Rules in which the public is not likely to be interested, the Commission found for good cause that compliance with the notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), was unnecessary. Furthermore, in light of the heavy maritime frequency traffic in New York and New Orleans, the Commission found good cause to make the specified VTS channels available immediately. Therefore, the rule amendment is effective immediately upon this publication in the **Federal Register.**

8. The amended rule is issued under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

List of Subjects in 47 CFR Part 80

Coast stations, Radio, Ship stations, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amended Rule

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. Section 80.383(a) is revised to read as follows:

§ 80.383 Vessel Traffic Services (VTS) system frequencies.

* * * * *

(a) Assigned frequencies:

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas
156.250	Seattle.
156.550	New York [1], New Orleans [1], Houston.
156.600	New York [1], New Orleans [1], Houston.
156.700	New York [1], New Orleans [1], Seattle.

[1] Until further notice, this frequency is available for use as permitted by § 80.373(f), notwithstanding the provisions of footnote 3 that are applicable to the VTS system. Availability is a result of the closure of the VTS systems for the port areas of New York and New Orleans. If the United States Coast Guard re-establishes one or both of these systems, the Commission may require operations pursuant to such conditional licenses for this frequency to cease, or may choose not to renew such conditional licenses. All licenses for this frequency will be expressly conditioned upon the continued availability of the frequency for non-VTS use.

* * * * *

[FR Doc. 89–3974 Filed 3–1–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdmt 1–227]

Organization and Delegation of Powers and Duties to Administrator of Federal Railroad Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Administrator of the Federal Railroad Administration ("FRA") all functions vested in the Secretary of Transportation ("Secretary") by section 18 (g) and (h) of the Rail Safety Improvement Act of 1988 (Pub. L. No. 100–342, 102 Stat. 636) since these functions relate to duties normally carried out by FRA.

EFFECTIVE DATE: The effective date of this amendment is February 25, 1989.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Esq., Office of the General Counsel, C–50, Department of Transportation, 400—7th Street, SW., Washington, DC 20590 (202) 366–9306.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary, and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

Section 18 of the Rail Safety Improvement Act of 1988 contains two provisions related to rail passenger service and the operation of such service by the National Railroad Passenger Corporation ("Amtrak"). Section 18(g) provides that Amtrak or the owner of any facility which presents

a danger to the employees, passengers, or property of Amtrak may petition the Secretary of Transportation for assistance to the owner of the facility for relocation or other remedial measures to minimize or eliminate such danger. If the Secretary determines that the facility presents a danger of death or serious injury to any employee or passenger of Amtrak or serious damage to any property of Amtrak and that the owner of the facility should not be expected to bear the cost of the relocation or other remedial measures necessary to minimize or eliminate the danger, then the Secretary is to recommend to Congress that Congress authorize funding, by reimbursement or otherwise, for the relocation or other remedial measures.

Section 18(h) provides that Amtrak may apply to the Secretary of Transportation, alone or in cooperation with the owner or operator of any rail passenger station, for funding appropriated by Congress to correct violations of building, construction, fire, electric, sanitation, mechanical, or plumbing codes, that were the subject of a violation notice received before October 1, 1987, from state or local authorities.

Since both of these statutory provisions involve rail passenger service issues traditionally within the responsibility of the Federal Railroad Administrator, they are being delegated to the Administrator.

List of Subjects of 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

For the reasons set forth in the preamble, Title 49, Part 1, of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.49 of Part 1 of Title 49, Code of Federal Regulations, is amended by adding at the end thereof a new paragraph (cc), and the introductory text of § 1.49 is reprinted for the convenience of the reader, as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

The Federal Railroad Administrator is delegated authority to—

* * * * *

(cc) Carry out the functions vested in the Secretary by section 18 (g) and (h) of the Rail Safety Improvement Act of 1988 (Pub. L. No. 100-342).

Issued in Washington, DC, on February 25, 1989.

Sammuel K. Skinner,

Secretary of Transportation.

[FR Doc. 89-4892 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. 87-09: Notice 4E]

Odometer Disclosure Requirements; Alabama

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (Alabama).

SUMMARY: This is in response to a petition for an extension of time filed by the Alabama Department of Revenue, Motor Vehicle Division (Alabama). Alabama cannot conform its laws and title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Alabama an extension of time, until December 31, 1989, to achieve compliance. Because Alabama has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Alabama's petition for an extension of time. Alabama has until December 31, 1989 to revise its titles and laws to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Alabama's Petition

The Alabama Department of Revenue, Motor Vehicle Division, (Alabama) submitted a petition for an extension of time. In support of its petition, Alabama states that it will require a conforming odometer disclosure statement with every application for title to support the final reassignment to the title applicant. This requirement and computer programming changes, which have been requested, will ensure that Alabama is able to include the odometer reading on the title and whether or not the odometer reading reflects the actual mileage or exceeds the mechanical limits of the odometer. Legislation paralleling the Federal law has been drafted and will be introduced in the Alabama Legislature shortly. Alabama is currently working to develop a conforming title document. Finally, Alabama states that it has a seven month stock of title documents and that issuing conforming title documents prior to exhausting its current supply "will create a severe financial burden on an already tight budget." Therefore, Alabama requests that it be granted an extension of time until December 31, 1989.

NHTSA's Response to the Petition

NHTSA finds that Alabama has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since enactment of the Truth in Mileage Act and the issuance of the implementing regulation, Alabama drafted and introduced legislation to enact odometer statutes which parallel the Federal odometer law. In addition, Alabama has requested computer programming changes and will require, on or before April 29, 1989, that each application for title be accompanied by a conforming odometer disclosure statement. These two actions will ensure that the title documents, issued

by Alabama, will conform to the Federal requirements by including an odometer reading and a notation of whether or not the odometer reading reflects the actual mileage or whether the reading reflects the mileage in excess of the designed mechanical limits. Alabama is currently developing a conforming title document. Destroying a seven month supply of title documents could result in a severe financial burden to Alabama.

In light of Alabama's past and planned actions, and in order to allow Alabama to expend its current supply of title documents, we grant Alabama's request for an extension of time until December 31, 1989, to revise its title documents and laws to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on February 27, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-4822 Filed 2-27-89; 1:20 pm]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket No. 87-09: Notice 4F]

Odometer Disclosure Requirements; Delaware

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (Delaware).

SUMMARY: This is in response to a petition for an extension of time filed by the Delaware Department of Public Safety, Division of Motor Vehicles (Delaware). Delaware cannot conform its title documents and laws to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Delaware an extension of time, until January 1, 1990, to achieve compliance. Because Delaware has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Delaware's petition for an extension of time. Delaware has until January 1, 1990 to revise its title documents and its laws to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extenison of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Delaware's Petition

The Delaware Department of Public Safety, Division of Motor Vehicles, (Delaware) submitted a petition for an extension of time. In support of its petition, Delaware states that it drafted legislation to amend its existing odometer mileage law and has requested funds in its budget request to accomplish revisions to the title document and reassignment forms. Although the Delaware General Assembly convened in January, due to recesses, most legislative action will take place after April 15, 1989. Delaware is unable to purchase new title documents until a new budget is enacted and a contract is awarded. Finally, Delaware is planning revisions to its title documents to comply with the Federal law and regulations and computer programming changes. Therefore, Delaware requests that it be granted an extension of time until January 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that Delaware has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act, Delaware has drafted legislation to amend its existing odometer mileage law and requested the necessary funds to accomplish revisions to the title documents and reassignment forms. The Delaware General Assembly convened in January, but due to recesses, the April 29, 1989 effective date of the Federal laws and regulations does not afford the General Assembly sufficient time to consider the proposed legislation.

In light of Delaware's past and planned actions, we grant Delaware's request for an extension of time until January 1, 1990, to revise its titles documents and its laws to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on February 27, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-4823 Filed 2-27-89; 1:21 pm]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket No. 87-09: Notice 4G]

Odometer Disclosure Requirements; Georgia

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (Georgia).

SUMMARY: This is in response to a petition for an extension of time filed by the Georgia Department of Revenue, Motor Vehicle Division (Georgia). Georgia cannot conform its laws and title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Georgia an extension of time, until July 1, 1990, to achieve compliance. Because Georgia has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and intends to take additional action while the extension is in effect, we have granted Georgia's petition for an extension of time until July 1, 1990 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer rules, the agency published final rules, which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Georgia's Petition

The Georgia Department of Revenue, Motor Vehicle Division, (Georgia) submitted a petition for an extension of time. In support of its petition, Georgia states that it has been actively implementing the provisions of the Truth in Mileage Act. Georgia's current title was revised in March 1988 (after NHTSA's notice of proposed rulemaking, but prior to the issuance of NHTSA'S final rule). In addition, the Georgia Legislature revised some of the State's laws to conform to the Truth in Mileage Act, however, some additional revisions are needed to conform to NHTSA's August 1988 final rule. Georgia is uncertain whether the current legislature, which meets until March 1989, will enact all of the enabling legislation. Georgia may need to defer to the next legislative session which begins in January 1990. Computer programs at State and county levels must be revised. Therefore, Georgia requests that it be granted an extension of time until July 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that Georgia has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

In March 1988, Georgia redesigned its title document, incorporating several improved features. New security features were used. Georgia added spaces for the printed name of the seller and buyer. These new titles also include a more thorough reference to the Federal law. However, in order to conform with the Federal requirements, as noted in Georgia's petition, Georgia must make additional revisions to the title document. (The State will be notified by letter of the changes needed.) Georgia is also revising its laws to meet the new Federal requirements and expects to make changes to its computer programs.

In light of Georgia's past actions and its expressed intention to make additional changes, and in order to allow Georgia to expend its current supply of title documents which it had ordered prior to the publication of NHTSA's final rule, we grant Georgia's request for an extension of time until July 1, 1990, to revise its title documents and its laws to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on February 27, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-4824 Filed 2-27-89; 1:22 pm]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket No. 87-09; Notice 4H]

Odometer Disclosure Requirements; Maryland

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (Maryland).

SUMMARY: This is in response to a petition for an extension of time filed by the Maryland Motor Vehicle Administration (Maryland). Maryland cannot conform its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Maryland an extension of time, until April 30, 1990, to achieve compliance. Because Maryland has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Maryland's petition for an extension of time. Maryland has until April 30, 1990 to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations sets forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Maryland's Petition

The Maryland Motor Vehicle Administration (Maryland) submitted a petition for an extension of time. In support of its petition, Maryland states that in September 1988, Maryland began to revise its title and reassignment documents to conform to the Truth in Mileage Act and the implementing regulations. Maryland is redesigning the title document to incorporate all the information required including space for the signatures and printed names of the buyers and sellers and mileage disclosures. Once the format is finalized, Maryland will submit it to NHTSA for review and enter into a contract for the printing of the title documents. Maryland estimates that this process will take between eight and ten months. In addition, Maryland is designing an automated titling system that will enable the State to issue a title document within forty-eight hours after it receives an application for title. Therefore, Maryland requests that it be granted an extension of time until April 30, 1990.

NHTSA's Response to the Petition

NHTSA finds that Maryland has made reasonable efforts to achieve compliance with the Motor Vehicle

Information and Cost Savings Act and the implementing regulations.

After enactment of the regulation implementing the Truth in Mileage Act, Maryland began to redesign its title documents to incorporate the information required by the Act. Maryland will submit a copy of this title specimen to NHTSA for review. Upon completion of this review, the State will be notified by letter as to the acceptability of the proposed title.

In light of Maryland's past and planned actions, we grant Maryland's request for an extension of time until April 30, 1990, to revise its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on February 27, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-4825 filed 2-27-1:23 pm]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket No. 87-09: Notice 4I]

Odometer Disclosure Requirements; New Hampshire

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (New Hampshire).

SUMMARY: This is in response to a petition for an extension of time filed by the New Hampshire Department of Safety, Division of Motor Vehicles (New Hampshire). New Hampshire cannot conform its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant New Hampshire an extension of time, until April 29, 1990, to achieve compliance. Because New Hampshire has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted New Hampshire's petition for an extension of time. New Hampshire has until April 29, 1990 to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needed additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

New Hampshire's Petition

The New Hampshire Department of Safety, Division of Motor Vehicles, (New Hampshire) submitted a petition for an extension of time. In support of its petition, New Hampshire states that its title meets the security requirements of the law and the August 1988 regulation. The title is printed on security paper by the intaglio method and includes latent images and micro-line printing. To enable the detection of alterations, the title has erasure sensitive background inks. New Hampshire is actively seeking to secure its separate reassignment documents. New Hampshire is also modifying its title to meet the new requirements and expects to issue a title upon which the owner's and lienholder's names and addresses, vehicle identification information, and date of issue are computer generated. Finally, New Hampshire states that it has a one year supply of titles and that issuing conforming documents on April 29, 1989, "would constitute an undue hardship." Therefore, New Hampshire requests that it be granted an extension of time until April 29, 1990.

NHTSA's Response to the Petition

NHTSA finds that New Hampshire has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since 1983, New Hampshire has issued title documents which are set forth by a secure process. After enactment of the Truth in Mileage Act and the implementing regulations, New Hampshire planned changes to their computer system and will be issuing title documents upon which certain information will be computer generated and printed. This action will lessen the likelihood of errors which could result from transposing numbers and/or letters when copying them from a title application. This action will also deter alterations because it is more difficult to alter information that is printed by a computer than to alter information that is handwritten in ink. The compter data and the title information will also be consistent. New Hampshire also began to modify its title to meet the new Federal requirements and destroying a one year supply of titles could result in hardship.

In light of New Hampshire's past and planned actions, and in order to allow New Hampshire to expend its current supply of titles, we grant New Hampshire's request for an extension of time until April 29, 1990, to revise its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on February 27, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-4826 Filed 2-27-89; 1:24 pm]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket No. 87-09: Notice 4J]

Odometer Disclosure Requirements; New York

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (New York).

SUMMARY: This is in response to a petition for an extension of time filed by the New York Department of Motor Vehicles (New York). New York cannot conform its title documents to meet the

requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant New York an extension of time, until April 29, 1990, to achieve compliance. Because New York has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted New York's petition for an extension of time. New York has until April 29, 1990 to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

New York's Petition

The New York Department of Motor Vehicles (New York) submitted a petition for an extension of time. In support of its petition, New York states that by April 29, 1989, it will have amended the Commissioner's Regulations to include the Federal regulatory definitions and it will print the odometer reading on the face of its title documents, with a notation of either actual mileage, not the actual mileage, or exceeds the mechanical limits. New York also states that the three documents that are used in the State to transfer ownership, the Title Document (MV999); Certificate of Sale (MV–50); and the salvage certificate (MV–907A), are set forth by means of a secure process. However, New York cannot conform its title documents to all the other Federal regulatory requirements by April 29, 1989. New York plans to revise the current title documents to meet the Federal requirements and have them printed and distributed within eight to ten months. In addition, New York has a one year supply of the title documents, purchased at a total document cost of $255,600. New York explains that destroying the documents could result in a financial burden to the State. Until the current supply is depleted, New York will issue a supplemental odometer disclosure statement which meets the Federal regulatory requirements. Because the current inventory of title documents will be depleted by April 1990, New York requests that it be granted an extension of time until April 29, 1990.

NHTSA's Response to the Petition

NHTSA finds that New York has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, New York has drafted regulations to incorporate the Federal regulatory definitions into the Commissioner's Regulations. In addition, New York has designed, and will be issuing, a supplemental odometer disclosure statement that meets the Federal requirements. It will also be revising its current title documents and expects that they will be ready for distribution within the next eight to ten months.

In light of New York's past and planned actions, and in order to allow New York to expend its current supply of title documents, we grant New York's request for an extension of time until April 29, 1990, to revise its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on February 27, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89–4827 Filed 2–27–89; 1:25 pm]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 81133–9030]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of adjustment of 1989 fishing quotas.

SUMMARY: NOAA issues this notice of adjustment of fishing quotas for the surf clam and ocean quahog fisheries for 1989. These quotas were selected from a range defined as optimum yield for each fishery and are adjusted to reflect 1988 fishing activity at the conclusion of the year. The intended effect of this action is to establish adjusted allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1989.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst), 508–281–3600, ext. 252.

SUPPLEMENTARY INFORMATION: The regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been established as the optimum yield for each fishery.

The final 1989 quotas were published on February 10, 1989 (54 FR 6415). The final quotas are adjusted under § 652.21 (a), (b), and (c) to reflect the amount of underharvest or overharvest in each designated surf clam fishery for 1988. The ocean quahog quota is not adjusted unless quarterly quotas have been established, which to date, has not been necessary.

The total harvest at the conclusion of the 1988 fishing season for the Mid-Atlantic surf clam fishery was 2,782,000 bushels out of an adjusted quota of 2,695,000 bushels and a base quota of 2,650,000 bushels. The 1988 Nantucket Shoals surf clam fishery harvest amounted to 205,000 bushels out of an adjusted quota of 205,000 bushels and a base quota of 200,000 bushels. The Georges Bank surf clam fishery harvest for 1988 was 97,000 bushels out of an adjusted quota of 485,000 bushels and a

base quota of 300,000 bushels. As a result of the final 1988 harvest, the Mid-Atlantic surf clam fishery quota is adjusted downward by 87,000 bushels, the Georges Bank surf clam fishery quota is adjusted upward by 203,000 bushels and the Nantucket Shoals surf clam fishery quota is unchanged. Overages are deducted from the adjusted quota for the fishing year. This is the amount of resource that may be extracted during any one fishing year. Underages or carryovers are the remainder of the base quota which are unharvested by the end of the fishing year. The Council established the base quotas as the legitimate extraction rates from the resource on a yearly basis. The Council did not intend that the adjusted quota be used to calculate carryovers or underages since it could result in a cumulative quota over several years well in excess of the optimum yield for the fishery. This would be contrary to sound management of the resource. The total ocean quahog harvest for 1988 was 4,423,000 bushels from a quota of 6,000,000 bushels.

The final quotes for the surf clam ocean quahog fisheries for 1989 are:

1989 Adjusted Final Surf Clam/Ocean Quahog Quotas

Fishery areas	1989 adjusted final quotas (in bushels)
Mid-Atlantic surf clam	2,563,000
Georges Bank surf clam	503,000
Nantucket Shoals surf clam	200,000
Ocean quahog	5,200,000

For the surf clam fisheries, the annual quotas are divided into quarterly quotas under § 652.21 (a), (b) and (c), as follows:

1989 Surf Clam/Ocean Quahog Quarterly Quotas

[in bushels]

Fishery area	Qtr 1	Qtr 2	Qtr 3	Qtr 4
Mid-Atlantic surf clam	575,500	662,500	662,500	662,500
Georges Bank surf clam	125,750	125,750	125,750	125,750
Nantucket Shoals surf clam	40,000	60,000	60,000	40,000

Other Matters

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with E.O. 12291. The action is covered by the certification for Amendment 3 to the FMP, and under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-4896 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 40
Thursday, March 2, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practice and Procedure: Appeal Form (Optional Form 283); Revision

AGENCY: Merit Systems Protection Board.

ACTION: Proposed rule; notice of public information collection requirements submitted to OMB for review.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) proposes to revise its appeal form, Optional Form 283 (Rev. 5–85), which currently appears in 5 CFR Part 1201, Appendix I, and is stocked by the General Services Administration. The form is being revised to (1) eliminate reference to the Voluntary Expedited Appeals Procedure (VEAP) as announced in 52 FR 47547, December 15, 1987, (2) explain that disclosure of the Social Security number on the appeal form is voluntary and that failure to provide it will not result in the rejection of an appeal, and (3) make minor revisions in format. Further, the MSPB is submitting the form to the Office of Management and Budget (OMB) for assignment of an OMB control number under section 3504(h) of the Paperwork Reduction Act of 1980, and calling for comments on the public reporting burden.

DATES: Send comments concerning the proposed revision of the form before March 15, 1989; send comments concerning the paperwork burden before May 15, 1989.

ADDRESSES: Comments concerning the proposed revision of the appeal form should be addressed to Paul D. Mahoney, Director, Office of Management Analysis, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419. Comments concerning the paperwork burden should be addressed to Paul D. Mahoney, Director, Office of Management Analysis, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419; and the Office of Management and Budget, Paperwork Reduction Project (Optional Form 283), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Paul D. Mahoney, Director, Office of Management Analysis; (202) 653–8892.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board (MSPB) processes appeals from current and former Federal employees and applicants for Federal employment. Through years of experience, the MSPB has determined that certain information will help process these appeals. An optional form for voluntary use by persons appealing to the MSPB has been designed to assist appellants in providing relevant information. The MSPB is submitting the form to the Office of Management and Budget for assignment of an OMB control number under section 3504(h) of the Paperwork Reduction Act of 1980, and calling for comments on the public reporting burden, even though this form is not used by the "public" in the usual sense. Rather, it concerns the employment relationship between an applicant for Federal employment or employees and their agency. With this in mind, the reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the MSPB and OMB at the addresses shown above. The OMB is being asked to approve the form by May 15, 1989.

Regulatory Flexibility Act

The Clerk, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this proposed rule pursuant to sections 603 or 604 of the Regulatory Flexibility Act, because of the determination that this regulation would not have significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Merit Systems Protection Board proposes to amend Part 1201 as follows:

PART 1201—[AMENDED]

1. Authority for Title 5 CFR Part 1201 continues to read:

Authority: 5 U.S.C. 1205 and 7701(j).

2. Appendix I to Part 1201 is proposed to be amended by revising MSPB Optional Form 283 (Rev. 5–85) to read as follows:

BILLING CODE 7400-01-M

Appendix I to Part 1201—Merit Systems Protection Board Appeal Form OMB #_____

U. S. MERIT SYSTEMS PROTECTION BOARD

APPEAL FORM

INSTRUCTIONS

The purpose of this form is to help you provide important information to the U.S. Merit Systems Protection Board ("the Board") when you file an appeal. You are not required to use this form, and you are not limited to answering the questions if you feel there is other information you wish to provide. However, if you do not use the form, your appeal documents must comply with the Board's regulations. Your agency's personnel office will provide you with a copy of these regulations and the Board advises you to review them.

You may not file your appeal before the effective date of the action you are appealing.

All persons filing an appeal (appellants) who elect to use this form should complete Parts I through IV. Only those who are appealing reduction-in-force (RIF) actions are required to complete Part V. The information must be typed or printed clearly. Answer all questions and use "N/A" when the question is not applicable to your appeal.

You may supplement your response to any question on separate sheets of paper. **If separate sheets are used, please put your name and Social Security number at the top of each page.** Indicate by number which question you are answering, and attach the extra pages to the form.

Where To File

You or your representative are required to file one original and one copy of this form, together with its attachments, with the Board's regional office identified in the decision notice provided by the agency. Filing must be made either by personal delivery during normal business hours to the appropriate Board regional office or by mail addressed to that office. The Board recommends but does not require that you use certified mail.

Important

YOU MUST SIGN THIS FORM

Signing this form indicates your approval of the contents of the entire form, and it must be signed in the space provided for it *(Part I, line 6)* to be accepted by the Board.

Privacy Act Statement

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

The U.S. Merit Systems Protection Board is authorized under provisions of Executive Order 9397, dated November 22, 1943, to request your Social Security number. Providing your Social Security number is voluntary and failure to provide it will not result in the rejection of your appeal. Your Social Security number will only be used for identification purposes in the processing of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeals are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

Part I Appellant Identification

1. Name *(last, first, middle initial)*	2. Social Security Number
3. Present address *(number and street, city, state, and ZIP code)*. **You are required to notify the Board of any address change in order to insure the correct delivery of a decision.**	4. Home phone *(include area code)*
	5. Office phone *(include area code)*
6. I certify that all of the statements made in this appeal are true, complete, and correct to the best of my knowledge and belief.	Signature of Appellant / Date signed

NSN 7540-01-096 1230 50283-103 MSPB Optional Form 283 (Rev 1-89) 5 CFR 1201

Part II Appealed Action

7. Briefly describe the **agency action** you wish to appeal and attach any relevant documents, including the proposal letter, the decision letter, and the relevant SF50 or its equivalent.

8. Name and address of agency *(including bureau or other divisions, as well as street address, city, state and ZIP code)*

9. Your position title and duty station at the time of the action appealed

10. Grade at time of the appealed action

11. Salary at the time of the appealed action

12. Are you a veteran or entitled to the employment rights of a veteran?
☐ *Yes* ☐ *No*

13. Employment status at the time of the appealed action
☐ *Temporary* ☐ *Permanent* ☐ *Applicant* ☐ *Term* ☐ *Retired*

14. If retired, date of retirement *(month, day, year)*

15. Type of service
☐ *Competitive* ☐ *Excepted*

16. Length of government service

17. Length of service with acting agency

18. Were you serving a probationary or trial period at the time the action was taken?
☐ *Yes* ☐ *No*

19. Date you received written notice of the proposed action *(month, day, year) (attach a copy)*

20. Date you received the final decision notice *(month, day, year) (attach a copy)*

21. Effective date of the action *(month, day, year)*

22. Explain briefly why you think the agency was wrong in taking this action:

Proof of February 1, 1989

23. What action would you like the Board to take on this case?

24. If you believe you were discriminated against by the agency, in connection with the matter appealed, because of either your race, color, religion, sex, national origin, marital status, political affiliation, handicapping condition, or age, indicate so and explain why you believe it to be true. You must indicate, by examples, how you were discriminated against.

25. Have you filed a formal discrimination complaint with your agency or any other agency concerning the matter which you are seeking to appeal? ☐ *Yes (attach a copy)* ☐ *No*

26. If yes, place filed *(agency, number and street, city, state, and ZIP code).*

27. Date filed *(month, day, year)*

28. Has there been a decision? ☐ *Yes (attach a copy)* ☐ *No*

29. Have you, or anyone in your behalf, filed a formal grievance with your agency concerning this matter, under a negotiated grievance procedure provided by a collective bargaining agreement? ☐ *Yes (attach a copy)* ☐ *No*

30. If yes, place filed *(agency, number and street, city, state, and ZIP code).*

31. Date filed *(month, day, year)*

32. Has a decision been issued? ☐ *Yes (attach a copy)* ☐ *No*

33. If yes, date filed *(month, day, year)*

34. Name of issuing official

35. Title of issuing official

Part III Hearing

36. You may have a right to a hearing on this appeal. If you do not want a hearing, the Board will make its decision on the basis of the documents you and the agency submit. If no box is checked, the Board will presume you are waiving a hearing. Do you want a hearing?

Do you want a hearing? ☐ *Yes* ☐ *No*

If you choose to have a hearing, the Board will notify you where and when it is to be held.

Part IV Designation of Representative

37. You have the right to designate someone to represent you on this appeal. If he/she agrees to do so, this person does not have to be an attorney. The agency has a right to challenge your choice of a representative if there is a conflict of interest or position. You may change your designation of a representative at a later date, if you so desire, but must notify the Board promptly of any change.

"I hereby designate _____ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf."

38. Representative's address	39. Representative's employer
	40. Representative's telephone number *(include area code)*
	41. Representative's signature Date

Part V Reduction-In-Force (RIF)

Instructions

Fill out this part only if you are appealing from a Reduction-In-Force. Your agency's personnel office can furnish you with most of the information requested below.

42. Retention group and sub-group	43. Service computation date	44. Has your agency offered you another position rather than separating you? ☐ *Yes* ☐ *No*
45. Title of position offered	46. Grade of position offered	47. Salary of position offered $ per
48. Location of position offered		49. Did you accept this position? ☐ *Yes* ☐ *No*

50. Explain why you think you should not have been affected by the Reduction-In-Force. *(Explanations could include: you were placed in the wrong retention group or sub-group; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you have assignment [bump or retreat] rights; or any other reasons. Please provide as much information as possible regarding each reason.)*

Date: February 27, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-4889 Filed 3-1-89; 8.45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-196-AD]

Airworthiness Directives: Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, equipped with steel brakes or interim carbon brake control systems, which would require the replacement of aluminum brake control shafts with steel brake control shafts. These shafts are part of the brake metering valve control assembly. This proposal is prompted by reports of four brake control shafts failing in service. This condition, if not corrected, could result in the loss of braking to one side of the airplane or, potentially, the complete loss of braking.

DATE: Comments must be received no later than April 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-196-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-196-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: Operators of Boeing Model 757 series airplanes have reported four occurrences where the brake metering valve actuation shafts have failed and caused partial loss of braking. Boeing subsequently sent Telex BAB-LHR-88-0698RR, "Brake Metering Valve Actuation Shaft Failure," dated June 22, 1988, to operators, informing them of the problem and requesting expeditious replacement of the aluminum shafts with steel shafts as specified in the telex.

Subsequent investigation by the manufacturer revealed that the aluminum shafts were failing due to fatigue. The manufacturer has initiated a program to replace the aluminum shafts with a steel shaft that has increased strength.

The FAA has reviewed and approved Boeing Service Bulletin number 757-32-0083, dated December 15, 1988, which describes the replacement of the aluminum brake metering valve actuator shafts with steel shafts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the replacement of aluminum brake metering valve actuation shafts, in accordance with the service bulletin previously mentioned.

There are approximately 110 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 76 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,640.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757–32–0083, dated December 15, 1988, certificated in any category. Compliance required within the next 750 landings after the effective date of this AD or prior to the accumulation of 10,000 landings, whichever occurs later, unless previously accomplished.

To prevent the partial loss of braking and, potentially, the complete loss of braking, accomplish the following:

A. Replace aluminum brake metering valve actuation shafts with steel shafts, in accordance with Boeing Service Bulletin 757–32–0083, dated December 15, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 17, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–4838 Filed 3–1–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–193–AD]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with General Electric CF6 engines, which currently requires replacement of aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line. That action was prompted by reports of cracks in the aluminum brackets, which allowed the bracket flange and clamp to contact and wear the adjacent fuel line. This proposal is prompted by reports that the manufacturer subsequently delivered six airplanes with aluminum brackets that were not included in the applicability of that AD. This condition, if not corrected, could lead to abrasion of the fuel line wall, creating a fuel leak.

DATE: Comments must be received no later than April 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–193–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–193–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion: On August 26, 1987, the FAA issued AD 87–18–05, Amendment 39–5722 (52 FR 34631; September 14, 1987), applicable to certain Boeing Model 767 series airplanes equipped with General Electric CF6 engines. That AD requires replacement of hydraulic line support brackets in the engine strut with brackets made of inconel. Failure of the aluminum brackets had been reported to allow abrasion of the adjacent fuel line and result in a fuel leak.

Since issuance of that AD the manufacturer delivered six airplanes with aluminum brackets that are not included in the applicability of the AD. The FAA has determined that AD 87–18–05 must be revised to include those six airplanes.

The FAA has reviewed and approved Boeing Service Bulletin 767–29–0032, Revision 1, dated June 16, 1988, which describes the replacement of aluminum brackets with inconel brackets at three locations in each engine strut area. Revision 1 adds six airplanes to the service bulletin effectivity.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 87–18–05 and require the installation of inconel brackets in each strut area on six additional Boeing Model 767 airplanes, in accordance with the service bulletin previously mentioned.

There are 6 additional Boeing Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 1 airplane of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $640.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and

the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive, or negative, on a substantial number of small entities because few, if any, Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 87-18-05, Amendment 39-5722 (52 FR 34631; September 14, 1987), to read as follows:

Boeing: Applies to Model 767 series airplanes, equipped with General Electric CF6 engines, listed in Boeing Service Bulletin 767-29-0032 dated January 15, 1987, and airplanes Serial Numbers 22322, 23431, 23432, 23494, 23623, and 23624, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cracking of the hydraulic pressure line aluminum support brackets in the engine strut, and possible fuel line penetration, accomplish the following:

A. For airplanes listed in Boeing Service Bulletin 767-29-0032, dated January 15, 1987: Within the next 3,000 hours time-in-service after October 7, 1987, (which is the effective date of Amendment 39-5722) replace aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line, in accordance with that service bulletin.

B. For all other airplanes: Within the next 3,000 hours time-in-service after the effective date of this amendment, replace aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line in accordance with Boeing Service Bulletin 767-29-0032, Revision 1, dated June 16, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplane to a base for the accomplishment of the inspections and-or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Transport Airplane Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 17, 1989.

Leroy A. Keith, *Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-4839 filed 3-1-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AGL-4]

Proposed Casey, IL, Transition Area Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the existing Casey, IL, transition area to accommodate existing Standard Instrument Approach Procedures (SIAPs) to Casey Municipal Airport, Casey, IL. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before April 5, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 89-AGL-4, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AGL-4". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA

personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration. Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Casey, IL.

The present transition area is being modified to accommodate existing SIAPs. The only modification to the existing airspace is in the transition area extensions.

The extensions extend from the 5 mile radius area to 8.5 miles southwest and northeast of the airport; and within 4.25 miles each side of the 220° bearing and the 0350° bearing from the airport.

The realignment of existing SIAPs requires that the FAA alter the designated airspace to insure that the procedures will be contained within controlled airspace. The minimum descent altitude for the procedures may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12,1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Casey, IL [Revised]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Casey Municipal Airport, Casey, IL (lat. 39°18'07"N., long. 88°00'13"W.) and within 4.25 miles each side of the 220° bearing from the airport extending from the 5 mile radius area to 8.5 miles southwest of the airport; and within 4.25 miles each side of the 035° bearing from the airport extending from the 5 mile radius to 8.5 miles northeast of the airport.

Issued in Des Plaines, Illinois, on February 14, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89–4841 Filed 3–1–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–5]

Proposed Revision of Transition Area, Laurinburg, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Laurinburg, NC, transition area. Due to relocation of the Rocky Ford nondirectional radio beacon (NDB) and a planned instrument landing system (ILS) approach to Runway 5, the arrival area extension based on the Rocky Ford 226° bearing is no longer required. Also, this action will correct the description of the arrival area extension based on the Sandhills very high frequency omnidirectional range/tactical air navigation (VORTAC) and corrects the geographic position coordinates of the Laurinburg-Maxton Airport.

DATE: Comments must be received on or before March 29, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 89–ASO–5, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chjief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASO–5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPEM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Laurenburg, NC, transition area. This action will eliminate the arrival area extension based on the Rocky Ford 226° bearing, revise the description of the arrival area extension based on the Sandhills VORTAC bearing and correct the geographic position coordinates of the Laurenburg-Maxton Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them opeationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition Area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation of Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1345(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Laurenburg, NC [Revised]

That airspace extending upward from 700' above the surface within an 8.5-mile radius of Laurinburg-Maxton Airport (Lat. 34°47'15"N., Long. 79°21'50"W); within 3 miles each side of Sandhills VORTAC 154° radial extending from the 8.5-mile radius area to 19 miles southeast of the VORTAC, excluding that area which coincides with the Mackall AAF, NC, transition area.

Issued in East Point, Georgia, on February 14, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89–4840 Filed 3–1–89; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3531–3]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: On January 7, 1985, the Minnesota Pollution Control Agency (MPCA) submitted a proposed revision to the Minnesota particulate matter State Implementation Plan (SIP). This proposed revision includes a rule and appendices by which the State of Minnesota will issue equivalent visible emission limits (EVEL) to emission sources. However, under the terms of the rule, these EVELs, in certain cases, would automatically be made part of the SIP without the proper Federal rulemaking.

USEPA is proposing to disapprove this revision because: (1) The proposed procedures to determine EVELs allow the State to make certain discretionary decisions regarding opacity adjustments and therefore, the techniques are not completely replicable [1]; (2) relaxations under the rule do not require the Prevention of Significant Deterioration (PSD—Part C of the Clean Air Act) increments to be protected; and (3) the appendices to the rule have not undergone complete Minnesota rulemaking procedures and, therefore, are unenforceable.

The purpose of this notice is to present a discussion of the material submitted by the State to support the revisions, and to provide an opportunity for public comment on the revisions and on USEPA's proposed action.

DATE: Comments on this revision and on USEPA's proposed action must be received by April 3, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Anne E. Tenner, at (312) 886–6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886–6034.

SUPPLEMENTARY INFORMATION: On January 7, 1985, the MPCA submitted to USEPA a proposed revision to the Minnesota SIP in order to satisfy the requirements of 40 CFR 51.18 (a) through (h) for a general NSR program, as well as the Federal requirements for a Pb NSR program.

USEPA proposed rulemaking action on the majority of this submittal on February 17, 1987 (52 FR 4785). USEPA, at that time, did not propose action on a part of the January 7, 1985, submittal, 6 MCAR § 4.002 Part D, Opacity Standard Adjustment.

Rule C MCAR 4.002 Part D is a proposed revision to former APC–2(e), Variances. It allows an emission facility to apply for an alternative opacity limit

[1] In order for State SIP procedures to be replicable, they must be specific written procedures that apply to all SIP packages the State presents to USEPA for review. The concept of replicability is one of the tests used by USEPA to ensure that the decisions made by the State are sound and not arbitrary.

if (1) the source is in compliance with all other particulate regulations; (2) the total emission facility is in compliance with all applicable standards of performance (except the opacity standard); and, (3) the total emission facility was operated in a manner to minimize the opacity of emissions at the emission source during the performance tests.

Atmospheric modeling is required under Minnesota's proposed SIP revision in those cases where the entire emission facility has particulate emissions equal to or greater than 25 tons per year and the source's application for a permit modification contains data that indicates that an adjustment of the opacity standard may cause, or contribute to, a violation of a national ambient air quality standard. Minnesota intends these "standards" to include both the National Ambient Air Quality Standards (NAAQS) and the Prevention of Significant Deterioration (PSD) increments.

The adjusted opacity standard must be set at the most restrictive attainable level that the required performance tests establish for the emission source. The total emission facility with the adjusted opacity standard must comply with at least one of the following requirements: (a) Not cause or contribute to a violation of an ambient air quality standard, (i.e., NAAQS or PSD increment); (b) have potential emissions of particulate matter of less than 25 tons per year, and less than one ton per day; or (c) contribute less than one microgram per cubic meter to an annual ambient particulate matter standard (i.e., NAAQS or PSD increment) violation and less than five micrograms per cubic meter to a 24-hour ambient total suspended (TSP) particulate matter standard (i.e., NAAQS or PSD increment) violation. However, USEPA is not satisfied that the rule establishes replicable procedures for choosing alternative opacity limits. Therefore, USEPA proposes to disapprove this portion of the rule.

Appendices AA, BB, and CC discussed below, were submitted as technical support documents for the opacity standard adjustment provision of 6 MCAR § 4.0002. These Appendices will not be adopted as rules and regulations by Minnesota, and, therefore, the enforceability of the Appendices is questionable.

Appendix AA—Procedures for Making an Opacity Standard Adjustment

These procedures require that the adjusted opacity standard be set using the second high six-minute average of runs, during which no scheduled increased emissions occurred. These procedures also require that during runs when increased emissions occur, the adjusted opacity standard be set using either the high six-minute average which complies with the new adjusted standard, or opacity readings which comply with any exceptions allowed by an applicable rule. Appendix AA also specified that this general procedure for making opacity adjustment may be changed on a case to case basis. Because Appendix AA does not clearly define the deviation from the general procedure USEPA believes that the results may not be reproducible. Therefore, USEPA proposes to disapprove Appendix AA.

Appendix BB—Opacity Standard Adjustment and USEPA Review

Appendix BB describes the various levels of State and USEPA review required for opacity standard adjustments.

Nonattainment Areas—Any opacity adjustments to a boiler in a nonattainment area must be submitted to USEPA as a SIP revision. This was done to ensure that Reasonably Available Control Technology (RACT) would still be required (Minnesota's opacity regulations are largely responsible for RACT controls on boilers.) [2] If the opacity adjustment is for a non-boiler source in a nonattainment area, it must be submitted for USEPA review (but not necessarily as a SIP revision).

Opacity standard adjustments in attainment areas can generally be handled solely by MPCA. In those cases where the adjustment might increase emissions in an attainment area, the State would apply a generic screening procedure. USEPA has reviewed this procedure and has determined that it is not approvable because emission increases resulting from the relaxation of the opacity limit may not protect the PSD increment. Therefore, USEPA proposes disapproval of Appendix BB.

Appendix CC—Screening Methodology for Opacity Standard Adjustment in Attainment Areas

This Appendix contains a screening model which will be used in assessing the impact of an opacity standard adjustment in an attainment area. This analysis was intended to provide a quick assessment of the anticipated impact of an opacity adjustment and the need for more detailed analysis. USEPA has reviewed this Appendix and determined it is not approvable. Therefore, USEPA proposes the disapproval of Appendix CC.

Reasons for Proposed Disapproval

USEPA has reviewed the January 7, 1985, State submittal and determined that it is not approvable for the following reasons: First, the Minnesota rule and appendices do not establish replicable procedures for choosing alternative opacity limit adjustments. Second, neither the State rule nor appendices directly addresses the PSD increments. Finally, the appendices are not considered to be legally enforceable.

Further analysis of these issues is discussed below:

1. The process of adjusting opacity limits to correspond with emission levels that comply with the mass limits involves source specific rulemaking based upon the judgement of the MPCA without specific guidelines. Unless and until the Minnesota rules and appendices prescribe how the State is to exercise its judgement in reviewing an application for an alternative opacity limit, those procedures would not be replicable.

The opacity adjustment rule does not circumscribe the MPCA's discretion in setting testing conditions. The rule requires that the test data needed to calculate alternative opacity limits be collectd pursuant to 6 MCAR § 4.0021. That provision, however, permits the Director of the MPCA to set testing conditions. Furthermore, Appendix AA does not adequately prescribe how the MPCA would exercise its judgement in choosing testing conditions. Instead, it sets forth the "general philosophy" it would use in accounting for variables that present themselves in individual cases.

For all these reasons, the Minnesota procedures for determining opacity adjustment are not replicable. Approving them as generic procedures would create an impermissible delegation of USEPA's responsibility to decide whether the opacity limits provide the necessary guarantee that the SIP mass limits are being met.

Section 110(a) of the Clean Air Act does not authorize such a delegation.

2. Neither the Minnesota rule nor the technical support document ensures that emissions increases resulting from relaxations of the SIP opacity limits would not jeopardize the PSD increments. The rule refers only to "standards", not increments. The state had committed in a letter to interpret "standards" to include the "increments". However, according to USEPA's legal analysis, such a letter would not be

[2] RACT is a requirement for TSP nonattainment areas under section 172 of the Clean Air Act, but it is not required for PM_{10} SIPS.

legally enforceable and, therefore, would not provide the necessary protection. The State also has not addressed how it would protect visibility in its Class I PSD areas. Any relaxation in its particulate matter SIP, e.g., an EVEL, which triggers the visibility protection provisions of the PSD rules, must be analyzed to determine if visibility in Minnesota's Class I areas are still protected with such a relaxation.

3. Additionally, even if the appendices were replicable and protected the PSD increments (and visibility) and even if they were replicable, they still would be flawed because they are not legally enforceable. The appendices contain important substantive provisions not addressed in the rule itself. However, these provisions have not been adopted as enforceable rules by the State's rulemaking board. On a hypothetical level, even if the rule adopted by the board delegated to MPCA the authority to issue these substantive provisions, it is not likely that such a delegation would be valid, because the rule itself does not circumscribe the MPCA's discretion to decide whether these relaxations would conform to the general principles in the rule.

Conclusions

As a result of USEPA's analysis of the January 7, 1985, State submittal which contains a rule and appendices by which the State of Minnesota will issue equivalent visible emission limits (EVEL) to sources, USEPA proposes to disapprove this revision to the Minnesota particulate matter SIP, because: (1) The procedures to determine EVELs allow the State to make certain discretionary decisions in testing a source and, therefore, the techniques are not completely replicable; (2) relaxations under the rule do not require the PSD increments and visibility to be protected; and (3) the appendices to the rule have not gone through complete Minnesota rulemaking procedures.

Notwithstanding the above, the State of Minnesota may still submit site-specific EVELs to USEPA, and the Agency will rulemake on them based on the merits of the individual case.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under 5 U.S.C. 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities because there will be no relaxation of the emission limits.

Authority: 42 U.S.C. 7401 through 7642.

Dated: June 30, 1987.

Valdas V. Adamkus,

Regional Administrator.

Note: This document was received by the Office of the Federal Register February 27, 1989.

[FR Doc. 89-4853 Filed 3-1-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3531-2; MS-013]

Approval And Promulgation of Implementation Plans; Mississippi; PM_{10} SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 26, 1988, the State of Mississippi submitted revisions to its State Implementation (SIP) for particulate matter. The revisions became State-effective on June 4, 1988. The revisions were adopted pursuant to the requirements of section 110 of the Clean Air Act to provide for the attainment of EPA's new particulate matter standards, known as "PM_{10}" standards.

DATE: To be considered, comments must reach us on or before April 3, 1989.

ADDRESSES: Written comments should be addressed to Rosalyn D. Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Mississippi Department of Natural Resources, Bureau of Pollution Control, Post Office Box 10385, Jackson, Mississippi 39205.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864.

SUPPLEMENTARY INFORMATION: Pursuant to the 1977 amendments to the Clean Air Act, EPA, on July 1, 1987 (52 FR 24634), promulgated revised primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter by replacing the total suspended particulate matter standard with a standard that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The particles are referred to as PM_{10}.

The PM_{10} standards cover a size range of particles that is different than the range of particles covered by the former particulate standard for total suspended particulates (TSP). This means that states must develop and implement PM_{10} control programs. The process being used generally follows the basic approach used in the development and implementation of TSP control programs. First, EPA evaluated the probabilities of PM_{10} air quality levels predicted from actual TSP data and concluded that Mississippi was a Group III area, which means that the existing particulate matter control strategy is believed to be largely adequate to attain and maintain the PM_{10} standards. However, the Mississippi SIP still needs to be revised to address the PM_{10} NAAQS in the following ways:

a. To include State abient air quality standards for PM_{10} at least as stringent as the NAAQS,

b. To trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or PM_{10} emissions,

c. To invoke the emergency episode plan to prevent PM_{10} concentrations from reaching the significant harm level of 600 $\mu g/m^3$,

d. To meet ambient PM_{10} monitoring requirements of 40 CFR Part 58, and

e. To meet the requirements of 40 CFR 51.322 and 51.323 to report actual annual emissions of PM_{10} (beginning with emissions for 1988) for point sources emitting 100 tons per year or more.

Mississippi is proposing to revise its SIP to address the PM_{10} NAAQS. The definitions for "Total suspended particulate," "Particulate matter," "Particulate matter emissions," "PM_{10}," and "PM_{10} emissions" are being added or modified to read the same as the federal definitions. The other existing definitions in the SIP are being recodified.

In the new source review permit regulations, the definition of "Offset policy" was modified to identify the version of the federal regulations adopted. Also, definitions for "Significance levels" and "Significant impact" were added. The Redesignated Offset Policy was restructured so that the applicability requirement was recodified with two criteria and a new section was added defining prohibitions, more stringent than the federal conditions, on receiving a construction permit.

In the Emergency Episode Regulations several revisions were made. In the Episode Criteria Section, the paragraphs

for Alert, Warning and Emergency were revised to add the criterion for PM_{10}, to delete the criteria for particulates and for particulates and SO_2 combined and to add wording which matches the federal definition regarding continuation or recurrence of high pollutant concentration. The state is taking this opportunity to make additional changes unrelated to PM_{10}. The paragraph about air pollution forecasts was modified to contain the proper name of the air pollution agency; the criterion for oxidants was changed to ozone in the Alert, Warning and Emergency paragraphs; and the ozone concentration criteria in the Emergency paragraph was modified to match the federal definition.

In the Emergency Orders Section, "Suspended particulate matter" was deleted from the Air Pollution Alert and Air Pollution Warning paragraphs and replaced with PM_{10}."

Mississippi updated their Air Quality Surveillance Plan to reflect the addition of PM_{10}. EPA updated its delegation of the Prevention of Significant Deterioration program to Mississippi on May 20, 1988. Ambient Air Quality Standards are not included in the federally-approved Mississippi SIP; however, they have been revised to be consistent with the PM_{10} regulations and are referenced only for clarity.

Proposed Action:

EPA has reviewed the submitted material and found it to meet the requirements of 40 CFR Part 51. Therefore, EPA is today proposing to approve Mississippi's revisions for PM_{10} and is soliciting public comment.

For further information on EPA's analysis, the reader may consult a Technical Support Document which contains a detalied review of the materials submitted. This is available at the EPA address given above. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Under 5 U.S.C. 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbon, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: February 21, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 89–4852 Filed 3–1–89 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Ch.1

[CGD86–025; CGD88–079]

Commercial Fishing Industry Vessel Regulations, Extension of Comment Period

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice extends the comment period of the advance notice of proposed rulemaking to develop the safety regulations for uninspected fishing, fish processing and fish tender vessels to implement the provisions of the Commercial Fishing Industry Vessel Safety Act of 1988 (Act), Pub. L. 100–424 (53 FR 52735, December 29, 1988). The extension was requested by numerous concerns in the fishing vessel industry. The time period of the fishing season and the publication date of the advance notice created later receipt of the Advance Notice of Proposed Rulemaking. The requesters cited the broad scope of this regulatory initiative and their difficulty in providing meaningful responses within the original 60 day comment period due their personal involvement with the fishing vessel industry. Because of the requests for additional time to comment on the advance notice of proposed rulemaking, the deadline for receipt of comments is extended to April 15, 1989.

DATE: The comment period on the advance notice of proposed rulemaking is extended to April 15, 1989.

ADDRESS: Comments should be mailed to the Executive Secretary, Marine Safety Council (G–LRA–2/3600)[GCD 88–079), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Between the hours of 8 a.m. and 4 p.m. Monday through Friday except holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G–LRA–2), Room 3600, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Norman L. Lemley, Office of Marine Safety, Security and Environmental Protection, (202) 267–0001.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking was published on December 29, 1988, in the **Federal Register** (53 FR 52735).

February 27, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–4893 Filed 3–1–89; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–41, RM–6550]

Radio Broadcasting Services; Oskaloosa and Perry, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Jomast Corporation requesting the substitution of Channel 285C2 for Channel 285A at Oskaloosa, Iowa, the modification of its license for Station KOSK(FM) to specify operation on the higher powered channel, the substitution of Channel 287A for Channel 285A at Perry, Iowa, and the modification of Perry Broadcasting Company's license for Station KLDS, to specify operation on the alternate Class A channel. Both channels can be allotted in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter sites of Stations KOSK(FM) and KLDS, respectively. The coordinates for Channel 285C2 at Oskaloosa are North Latitude 41–19–15 and West Longitude 92–38–44. The coordinates for Channel 287A at Perry are North Latitude 41–49–58 and West Longitude 94–02–15. Both licenses can be modified without considering competing expressions of interest.

DATES: Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gregg P. Skall, Esq., Baker & Hostetler, 1050 Connecticut Avenue NW., Suite 1100, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 89–41, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–4872 Filed 3–1–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–40, RM–6571]

Radio Broadcasting Services; Vinton, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Harold A. Jahnke seeking the allotment of Channel 296A to Vinton, Iowa, as the community's first local FM service. Channel 296A can be allotted to Vinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.3 kilometers (5.8 miles) south to avoid a short-spacing to Station KROC–FM, Rochester, Minnesota. The coordinates for this allotment are North Latitude 42–04–42 and West Longitude 92–01–18.

DATES: Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harold A. Jahnke, 421 Central Avenue East, Hampton, Iowa 50441 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–40, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–4876 Filed 3–1–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–36, RM–6551]

Radio Broadcasting Services; Savannah, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Columbia FM, Inc., proposing the allotment of FM Channel 224C2 to Savannah, Missouri, as that community's first FM broadcast service. There is a site restriction 6.4 kilometers west of the community. The coordinates for Channel 224C2 are 39–57–35 and 94–54–14.

DATES: Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Columbia FM, Inc., 503 Old 63 North, Columbia, Missouri 65201.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–36, adopted February 23, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–4875 Filed 3–1–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89-42, RM-6508]

Radio Broadcasting Services; Bolivar, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Opel J. Shaw, proposing the allocation of Channel 234A to Bolivar, Tennessee, as that community's second local FM service. The reference coordinates for the proposal are 35-15-30 and 88-59-30.

DATES: Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Opel J. Shaw, P. O. Box 191, Bolivar, Tennessee 38008 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-42, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-4873 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-43, RM-6549]

Radio Broadcasting Services; Aberdeen, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Pioneer Broadcasting Company, Inc., licensee of Station KDUX-FM, Channel 284C2, Aberdeen, Washington, proposing the substitution of Channel 284C for Channel 284C2 and Aberdeen and modification of the station's license to specify operation on the higher class co-channel. A site restriction of 7.7 kilometers (4.8 miles) southeast of the city is required, at coordinates 46-54-51 123-47-06. Canadian concurrence must be obtained.

DATES: Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Paul J. Berman, Esquire, Debra Ann Palmer, Esquire, Covington & Burling, 1201 Pennsylvania Avenue, NW., P.O. Box 7566, Washington, DC 20044 (Counsels for petitioner)

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-43, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding property filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-4874 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 40
Thursday, March 2, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Human Nutrition Board of Scientific Counselors; Board Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of the Secretary announces the following meeting:

Name: Human Nutrition Board of Scientific Counselors

Date: April 26–27, 1989

Time and Place: April 26, 1989, 9 a.m.–5 p.m. and April 27, 1989, 9 a.m.–1 p.m.; Room 104–A, Administration Building on April 26, and on April 27, Room 107–A, Administration Building, United States Department of Agriculture, Independence Avenue, between 12th and 14th Streets, SW., Washington, DC.

Type of Meeting: Open to public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review as appropriate and advise the Department as to the scope and quality of the human nutrition research and education programs carried out in the Department of Agriculture. The board also will prepare a report of its review, including evaluation and recommendations, to be submitted to the Secretary of Agriculture.

Contact Person: Gerald F. Combs, Assistant Deputy Administrator for Human Nutrition, Agricultural Research Service, U.S. Department of Agriculture, Room 132, Building 005, Beltsville Agricultural Research Center-West, Beltsville, Maryland 20705, telephone (301) 344–3216.

Done at Washington, DC, this 13th day of February, 1989.

Orville G. Bentley,

Assistant Secretary Science and Education.

[FR Doc. 89–4924 Filed 3–1–89; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Ward Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for the proposed Ward Timber Sale on the Luna Ranger District, Gila National Forest, Luna, New Mexico.

The proposed Ward Timber Sale is included in the Gila Forest Plan. Scoping, data collection and analysis have been in progress for over a year.

The scoping process has included public meetings, on-the-ground reviews, posting of notices, news releases, personal telephone conversations, interviews, and letters. The environmental analysis progressed to the point of identifying alternatives when it was determined that the intensity of the controversy over the effects of the proposal was considered significant. Gila National Forest Supervisor, David Dahl, decided to prepare an environmental impact statement.

A range of alternatives will be considered. A no action alternative will consider no timber harvest. Other alternatives will include management themes emphasizing: spotted owl, bear, and old-growth habitat; emphasis on maintaining primitive, roadless management; obtaining habitat diversity objectives by use of fire without timber harvest; emphasis on timber harvest with minimum wildlife habitat restrictions; emphasis on utilizing conventional tractor skidding logging methods to harvest timber; and other alternatives that may be developed as the process continues.

Federal, State, local agencies, organizations, and individuals have participated in the scoping process. Additional scoping will be conducted so that any additional agencies, organizations, or individuals may participate. This process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

The Luna District Ranger will hold an open house in his office at Luna, New Mexico from 8:00 a.m. until 5:00 p.m. on Saturday, March 11, 1989.

The analysis is expected to take about 6 months. The draft environmental impact statement should be available for public review by August, 1989. The final environmental impact statement is scheduled to be completed by November, 1989.

David Dahl, Forest Supervisor, Gila National Forest is the responsible official.

DATE: Comments concerning the scope of the analysis should be received by July 1, 1989.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Jerry Hibbetts, District Ranger, P.O. Box 91, Luna, New Mexico 87824, by July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Brian Ferguson or Jerry Hibbetts, phone 505–547–2611.

Date: February 6, 1989.

David W. Dahl,

Forest Supervisor.

[FR Doc. 89–4819 Filed 3–1–89; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the United States Arctic Research Commission will hold its 17th Meeting in Washington, DC, on 28–29 March, 1989. The meeting will start at 9:30 a.m. in Hearing Room A of the Interstate Commerce Commission Building at 12th and Constitution Avenue NW., Washington, DC. Agenda items include: (1) Chairman's Report; (2) Comments from the Interagency Arctic Research Policy Committee, the Alaska Congressional Delegation, and the Alaska Governor's Office; (3) Report on "A Strategic Plan for Cold Regions Engineering Research"; (4) Status of the proposed establishment of an International Arctic Science Committee; (5) Ethical principles for the conduct of research; (6) Federal Budget Process for Funding Research; and (7) Arctic Programs of the National Oceanic and Atmospheric Administration, the Department of the Interior, and the National Science Foundation.

On 29 March the Commission will meet starting at 9:00 a.m. in Room 6333 of the Interstate Commerce Commission Building. Matters to be discussed include: (1) Approval of minutes of the 16th Meeting; (2) Resolution on Arctic vessels; (3) Discussion of procedures leading to environmental impact statements; and (4) Consideration of ARC Brochure and logo.

From 1:30 p.m., until 3:00 p.m., on 29 March 1989 the Commission will meet in Executive Session to discuss (1) Commission meeting procedures and responsibilities of Members and Staff; (2) Adoption of an ethics policy; (3) Additions to the Group of Advisors; (4) Budget Request for FY 91; and (5) Plans for Future Meetings.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission (202) 371–9631.

Philip L. Johnson,

Exective Director, U.S. Arctic Research Commission.

[FR Doc. 89–4793 Filed 3–1–89; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for expedited clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Export Administration Focus Group Guide.

Form Number: Agency—N/A; OMB—N/A.

Type of Request: New Collection—Expedited Review Requested—Within 10 days of OMB's receipt.

Burden: 120 respondents; 480 reporting hours. Average Hours Per Response—4 hours.

Needs and Uses: The information is needed to conduct an evaluative study of the delivery of export administration services to the public at selected locations in the U.S. The findings will be shared by OMB and the Congress and will be used by the Department as a basis for decisions concerning the future organization and delivery of export administration services outside of Washington, DC.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395–7340.

The information collection instrument follows: If you need additional information, please call or write DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 24, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

Public reporting for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of reducing this burden, to Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230 and the Office of Management and Budget, Paperwork Reduction Project (0694–XXXX), Washington, DC 20503.

Guide for Conducting Focus Groups

The Department of Commerce has contracted with Price Waterhouse to conduct an evaluative study of the delivery of export administration services to the public at selected locations around the U.S. The purpose of the study is to (1), assess the quality and quantity of services; (2), assess current and projected demand for services; and (3), make recommendations as to future organization and funding of these services.

To assist in assessing export administration service delivery, Price Waterhouse is conducting a series of ten focus groups with exporters who have received export administration assistance from nine U.S. Department of Commerce District Offices and a recently opened Bureau of Export Administration Office in Newport Beach, CA. Each focus group will be comprised of an average of 12 exporters for a total of approximately 120 companies

This focus group guide is designed to facilitate the conduct of these focus group sessions with exporters in the nine study cities. The guide is divided into six major sections as follows:

- Company Background
- Quality of Export Administration Services
- Demand for Services
- Other Issues
- Conclusion and Summary

Focus Group Guide

It is envisaged that free-form discussion will focus on questions such as those listed in the bullet points under each subject area:

I. Question 1: Describe the Background of Your Company

The purpose of this section of the focus group will be to develop an understanding of participants' experience with local delivery of export administration services. Issue areas to be discussed may include the following:

- Has your company requested export administration assistance from a District Office, Commerce Headquarters, or another organization (such as a state or local trade office)?
- If you came to this office to seek advice on export administration, why did you select this office?
- Describe the types of export administration services that your company has used.
- Are you aware of the range of services provided and how they might apply to your company?

II. Question 2: Quality of Export Administration Services

During this section of the focus group, exporters will be asked to comment on the equality of services provided in their city. Illustrative questions to be addressed may include the following:

- How would you define the term "quality" with respect to export administration services?
- What are your views on the quality of export administration services provided by the District Offices?
- What is your perception of the knowledge and experience of the persons providing export administration services?
- What strengths of weaknesses do you see in the present system for delivery of export administration services?

III. Question 3: Demand for Services

In this session, exporters will be asked to comment on future demand for export administration services. Issue areas may include the following:

- How often do you anticipate that your company will need export administration services in the future?

Would you use the District Offices for these services?

• For your industry as a whole, what will be the future needs for export administration services?

• What factors will affect your needs for future export administration services?

IV. Question 4: Delivery of Services

Exporters will be asked to comment on service delivery issues including organization and level of assistance. Examples of questions to be addressed may include:

• Should there be any change in the way export administration services are currently provided?

• What level of export administration services should be available at this local level (i.e., general advice, commitments on classsification, license acceptance)?

• Should there be any change in the way they are provided?

• What organizational alternatives would you suggest for service delivery?

V. Question 5: Other Issues

Participants will be asked to comment about the focus group session and about the project. Examples of questions to be asked may include:

• Do you have any general comments about this focus group session or about this U.S. DOC/Price Waterhouse project?

• What advice or suggestions do you have that will help meet the project objectives?

VI. Conclusion and Summary

In this final part of the session, the focus group leader will summarize the tentative findings and conclusions of the focus group as well as discuss findings of other sessions. The focus group leader will also describe the next steps to be conducted through completion of the project in mid-June 1989.

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International Trade Administration

[A-122-047]

Elemental Sulphur From Canada; Preliminary Results of Antidumping Duty Administrative Review, Tentative Determination To Revoke In Part, and Intent To Revoke In Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review, tentative determination to revoke in part, and intent to revoke in the part.

SUMMARY: In response to requests by the petitioner and eleven respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers 12 producers and/or exporters of this merchandise and generally the period December 1, 1986 through November 30, 1987. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has tentatively determined to revoke in part the antidumping finding with respect to B.P. Oil, Cornwall Chemicals, Home Oil, and Suncor, and intends to revoke the finding with respect to Cities Service, Imperial Oil, PetroGass Processing, Ltd., and Texaco Canada.

Interested parties are invited to comment on these preliminary results, tentative determination to revoke in part, and intent to revoke in part.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 15257) the final results of its last administrative review of the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). The petitioner and eleven respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on January 27, 1988 (53 FR 2262). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appopriate HTS item number(s).

Imports covered by the review are shipments of elemental sulphur from Canada. During the review period such merchandise was classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated. This merchandise is currently classificable under HTS item 2503.10.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive. The review covers 12 producers and/or exporters of Canadian elemental sulphur to the United States and generally the period December 1, 1986 through November 30, 1987.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price was based on the f.o.b. or delivered price to unrelated purchasers in the United States. ESP was based on the packed, delivered price to the first unrelated purchaser in the United States. We made adjustments, where applicable, for foreign and U.S. inland freight, brokerage and handling charges, and in ESP calculations, the U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price and third country price, as defined in section 773 of the Tariff Act. Where there were no home market sales we used sales in a third country. Home market and third country prices were based on f.o.b. prices or delivered prices to unrelated purchasers in the applicable market. We made adjustments, where applicable, for tank car expenses, inland freight, forming, handling charges, and differences in credit expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review, Tentative Determination to Revoke in Part, and Intent to Revoke in Part

Timshel failed to respond to the Department's antidumping questionnaire, and we used the best information otherwise available for purposes of assessment and cash deposit of estimated antidumping duties for the firm. The best information otherwise available was Timshel's most recent rate.

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/Exporter	Period of Review	Margin (Percent)
BP Resources Canada	12/01/86–11/30/87	[1] 5.56
Burza Resources	12/01/86–11/30/87	0
Cities Services Oil & Gas	12/01/86–07/30/87	[1] 0
Cornwall Chemicals	12/01/86–11/30/87	[1] 3.84
Home Oil	12/01/86–11/30/87	0
Imperial Oil	12/01/86–07/09/87	0
InterRedec	12/01/86–11/30/87	0
Petro-Canada Resources	12/01/86–11/30/87	0
PetroGass Processing	12/01/86–06/19/86	[1] 0
Suncor	12/01/86–11/30/87	[1] 0
Texaco Canada	12/01/86–07/09/87	0
Timshel	12/01/86–11/30/87	28.90

[1] No shipments during the period; margins from last review in which there were shipments.

Parties to the proceeding may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for these firms (53 FR 15257, April 28, 1988).

For any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1987 and who is unrelated to the reviewed firms or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Although a review was requested for Koch Sulphur Products Company and we included it in our notice of initiation, we have determined that it is an importer of elemental sulphur from Canada. We conduct administrative reviews of exporters and producers as provided in § 353.53a of the Commerce Regulations. Therefore, we are not proceeding with an administrative review of Koch and will instruct the Customs Service to liquidate entries by Koch at the rates applicable to its suppliers.

On June 19, 1987, we tentatively determined to revoke in part the antidumping finding on elemental sulphur from Canada for PetroGass (53 FR 23327). On July 9, 1987, we tentatively determined to revoke in part the antidumping finding on elemental sulphur from Canada for Cities Services, Imperial, and Texaco Canada (53 FR 25895). PetroGass and Cities Services made no shipments of the subject merchandise to the United States for four years. Imperial and Texaco Canada made sales of the imported merchandise at not less than fair value for two years. As provided for in §353.54(e) of our regulations, these four firms agreed in writing to an immediate suspension of liquidation and reinstatement of the antidumping finding under circumstances specified in the agreements. Therefore, if this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by these four companies, and entered or withdrawn from warehouse, for consumption on or after the date of publication of our tentative determinations to revoke with respect to these firms

B.P., Cornwall Chemicals, Home Oil, and Suncor requested partial revocation of the antidumping finding on elemental sulphur from Canada. B.P., Cornwall Chemicals, and Suncor made no shipments of the subject merchandise to the United States for four years. Home Oil made sales of the imported merchandise at not less than fair value for two years. These four companies agreed in writing to an immediate suspension of liquidation and reinstatement of the antidumping finding under circumstances specified in the agreements. Therefore, we tentatively determine to revoke in part the antidumping finding on elemental sulphur from Canada with respect to these four companies. If this tentative determination to revoke is made final, it will apply to all unliquidated entries of the subject merchandise manufactured and exported by B.P., Cornwall Chemicals, Home Oil, and Suncor, and entered to withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review, tentative determination to revoke in part, intent to revoke in part, and notice are in accordance with §51 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53a and 353.54 fo the Commerce Regulations (19 CFR 353.53a and 353.54).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: February 23, 1989.

[FR Doc. 89-4789 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-484-801]

Final Determination of Sales at Less Than Fair Value; Electrolytic Manganese Dioxide From Greece

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that electrolytic manganese dioxide from Greece is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of electrolytic manganese dioxide from Greece. The U.S. International Trade Commission (ITC) will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro (202) 377–1130 or Holly Kuga (202) 377–4733, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that electrolytic manganese dioxide ("EMD") from Greece is being, or is likely to be, sold in the United States at less than fair value as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) ("the Act"). The weighted-average margin of sales at less than fair value is shown in the "Suspension of Liquidation" section of this notice.

Case History

On November 14, 1988, we made an affirmative preliminary determination (53 FR 45793). The following events have occurred since the publication of that notice.

On November 31, 1988, Tosoh Hellas requested that we postpone making our final determination for a period of thirty days pursuant to section 735(a)(2)(A) of the Act. On December 20, 1988, we issued a notice postponing the final determination until February 22, 1989 (53 FR 51129).

Both the cost of production and sales questionnaire responses from Tosoh Hellas were verified in Greece between November 28, and December 2, 1988.

On January 23, 1988, the Department held a public hearing. Petitioners and respondent also submitted comments for the record in prehearing briefs on January 17, 1989, and in posthearing briefs on February 2, 1989.

Scope of the Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the tariff Schedules of the United States Annotated ("TSUSA") to the Harmonized Tariff Schedule ("HTS"), as provided for in section 12101 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The product covered by this investigation is electrolytic manganese dioxide from Greece. During the investigation period, such merchandise was classifiable under item 419.4420 of the TSUSA. This merchandise is currently classifiable under HTS item number 2820.10.0000.

EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the investigation.

Fair Value Comparisons

To determine whether sales of EMD in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. We made comparisons on all sales of the product during the period of investigation December 1, 1987 through May 31, 1988.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for the sales by Tosoh Hellas to unrelated customers in the United States, all of which were made through a related trading company. We used purchase price as the basis for determining United States price since the following criteria were met: (1) The merchandise was sold to unrelated purchasers in the U.S. prior to importation; (2) the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent; (3) this was the customary commercial channel for sales of this merchandise between the parties involved; (4) the related selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Purchase price was based on the C.I.F. and F.O.B. (foreign port) price to unrelated purchasers in the United States. Where applicable, we made deductions for foreign inland freight and insurance, brokerage and handling, ocean freight, marine insurance, export licensing fees, U.S. inland freight, as well as additions for import duties, import taxes and value-added taxes not collected on exports of the merchandise.

Foreign Market Value

In accordance with section 773(a) of the Act, we determined that there were sufficient home market sales of such or similar merchandise by Tosoh Hellas to form the basis for foreign market value. For this reason, we have not applied the special rule for certain multinational corporations contained in section 773(d) of the Act as requested by petitioners (see Petitioners' comment 2 and the Department's response). Petitioners alleged that home market sales were made at less than the cost of production. We compared the home market prices exclusive of value-added tax to the cost of production, which included materials, fabrication costs, and selling, general, and administration expenses. Because all sales were found to be made at or above the cost of production, the Department used all home market sales in its fair value comparison.

Home market price was based on the delivered and "free on truck" price to unrelated purchasers in the home market. We deducted inland freight and home market packing, and added U.S. packing. We made a circumstance of sale adjustment for differences in credit and value-added taxes between the two markets.

Currency Conversions

We used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Negative Determination of Critical Circumstances

Petitioners alleged that imports of EMD from Greece present "critical circumstances." Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we based our analysis on the verified shipment data of the Greek respondent, for equal periods immediately preceding and following the filing of the petition until the month of our preliminary determination. Using this data, we find that there has been a slight decrease in imports of EMD following the initiation of this investigation. Since we do not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers of this product knew, or should have known, that it was being sold at less than fair value. Therefore, we determine that critical circumstances do not exist with respect to imports of EMD from Greece. We have notified the ITC of this determination.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Petitioners' Comments

Comment 1. Because home market sales of alkaline EMD are identical to U.S. sales of alkaline grade EMD and home market sales of zinc chloride grade EMD are identical to U.S. sales of zinc chloride grade EMD, the petitioners contend that alkaline and zinc chloride grades of EMD constitute two separate "such or similar" categories of EMD. Petitioners state that this conclusion is mandated by law since the definition of "such or similar merchandise" under section 771(16) specifically means "merchandise in the first of the following categories," *i.e.*, "merchandise which is identical in physical characteristics." Following this reasoning, since the home market sales of alkaline grade EMD by Tosoh Hellas are, when viewed alone, not viable (and the home market "such or similar" category of identical merchandise to which we are limited has been exhausted), petitioner further argues that the Department is precluded from using home market sales of zinc chloride grade EMD as the basis of comparison with U.S. alkaline sales. Therefore, foreign market value for alkaline grade EMD should be based on the home market selling price of the related Japanese producer according to the multinational provision.

Department's Position. We disagree. When analyzing the viability of a foreign market, the Department must determine whether adequate sales of comparable merchandise exist. The Department examines a category of merchandise composed of both such *and* similar merchandise in accordance with section 773(a)(1) because this category represents those sales which can serve as a basis for comparison. When testing market viability, section 771(16) of the Act does not preclude us from using a category containing both such and similar merchandise.

In this case, the Department determined that alkaline and zinc chloride EMD are comparable or "similar" merchandise. Information on the record clearly supports this conclusion since the two types of EMD are produced in the same production process and differ only in their final finishing. This finishing merely establishes the grind and the pH to which the EMD is neutralized. Additionally, there is minimal, if any, cost difference attributed to this finishing step, and these two grades are equal in commercial value. Both grades of EMD are used in the production of dry cell batteries. Accordingly, respondent's combined home market sales of alkaline and zinc chloride grade EMD are adequate as a basis of comparison since these sales exceed five percent of sales of that merchandise to third countries.

Comment 2. Petitioners argue that the multinational provision applies in this investigation and requires foreign market value to be determined on the basis of EMD sales in Japanese home market of Tosoh Hellas' parent. Section 773(d) of the Tariff Act provides that the special rule is applicable whenever:

(1) Merchandise exported to the United States is being produced in facilities which are owned or controlled, directly, or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;

(2) The sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with sales of the merchandise to the United States; and

(3) The foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation (19 U.S.C. section 1677b(d)).

Petitioners maintain that all of the above criteria are satisfied in this case. Regarding the second point, they state that, in determining home market viability, the Department erroneously applied the five percent standard specified in § 353.4. However, § 353.4 is not applicable to a determination of home market sales adequacy for the purpose of application of the multinational rule, which is governed by § 353.9 of the regulations.

Department's Position. The Department agrees with the petitioners that the first criterion of the multinational rule applies in this case since the Greek respondent, Tosoh Hellas, is owned by a firm with additional facilities in Japan to manufacture EMD. As for the second criterion, however, the Department disagrees with the petitioners' conclusions as to the viability of the Greek home market. As explained above, the Department has determined that alkaline and zinc chloride EMD comprise one "such or similar" category of merchandise. Sales of this merchandise in the home market are well above the five percent standard for the home market viability test established in § 353.4 of our regulations. Therefore, we determine that the special rule for multinational corporations contained in section 773(d) of the Act does not apply in this investigation.

The Department is not precluded from using the five percent standard when applying the multinational rule as petitioners contend. In our recent preliminary determination concerning *Ball Bearings and Parts Thereof From Thailand*, 53 FR 45334 (1988), the Department determined that the special rule for multinational corporations did not apply where the home market in Thailand was viable based on the criteria set forth in 19 CFR 353.4. In applying the multinational rule, section 773(d)(2) of the Act requires that sales in the home market be inadequate as a

basis for comparison. The Department has only one viability test for determining the adequacy of a home market, the five percent standard as set out in § 353.4 of the Department's regulations, which it has routinely applied when judging home market viability.

While the language of § 353.4 states, in part, that this section is to be applied to situations "other than that provided for in § 353.9," this language does not affect the application of the five percent test, but rather governs the choice of the appropriate market for determining FMV where sales in the country of exportation are deemed inadequate. Section 353.4 should be read in a manner that applies the five percent benchmark to situations where there is a question concerning home market viability such as where the multinational corporations provision might be applicable. However, unless the five percent test of § 353.4 indicates there is no viable home market, the requirements of the multinational corporations provision have not been met.

Comment 3. If the Dapartment bases foreign market value on home market sales in Greece, it should continue to compare the export prices of alkaline EMD and zinc chloride EMD sold to the United States with, respectively, the prices of home market sales of the same grade of EMB.

Department's Position. We agree. The Department selects that merchandise which is most appropriate for specific price comparisons in accordance with section 771(16) of the Act. The Department followed its standard methodology in this investigation by first matching identical merchandise sold in both markets. Specifically, the Department matched EMD of the same grade (alkaline or zinc chloride grade) when both were sold in the U.S. and home markets.

Comment 4. Petitioners advocate that the respondent's G&A, indirect selling expenses, and financing expenses be allocated over the reported volume of sales during the period of investigation.

Department's Position. We see no reason to change the respondent's allocation methodology. The petitioners are advocating the allocation of period expenses on the basis of "sales" as defined by the Department's date of sale methodology, which is used for properly determining those sales subject to the investigation. On its own books and records, a finished good usually is reflected as sold when it is shipped to fill a customer's order. Since, in this case, the allocation by shipment volume during the POI did not prove distortive, we have accepted the respondent's allocation.

Comment 5. Petitioners fault the treatment of manganese oxide ("MnO") in the calculation of the cost of production ("COP"). Because of the small volume and low value of MnO sales during the period as well as the fact that it is produced in the same process but only incidentally to the production of EMD, petitioners argue MnO is properly treated as a by-product of EMD production. Therefore, manufacturing costs should not be allocated to MnO, but rather the revenue received from the sale of MnO should be used to offset total production costs during the period.

Department's Position. The Department does not agree that MnO should be treated as a by-product in the production of EMD. By-products are basically waste products from the production of the primary product and possess only a residual value. The manufacture of MnO is the first step in the production process of EMD. Manganese ore is converted in this single, distinct production process which yields only one product, MnO. EMD is not produced at this stage. MnO generally continues on in the production process to be further transformed into EMD. Therefore, all costs incurred in the production process of converting manganese ore into MnO should appropriately be allocated to the MnO produced by this initial process.

Comment 6. Inventory carrying costs should be inputed for Tosoh Greece's inventories of manganese ore, anodes, and finished goods inventories.

Department's Position. When we calculate COP pursuant to section 773(b) of the Act, the Department is only interested in determining the actual costs incurred to produce the merchandise under investigation. The Department is not concerned with imputations necessary for determining differences in selling expenses between markets and, for this reason, does not impute costs in the calculation of cost of production. See *Final Determination of Sales at Less Than Fair Value: Certain All-Terrain Vehicles from Japan,* 54 FR 4864 (1989). Since the respondent included imputed credit expenses for home market sales in its calculation of COP, we have deleted this imputed credit expense from the COP used in our final determination.

Comment 7. Petitioners argue that the COP should be adjusted to compensate for certain practices that cannot be continued on a sustained basis. In particular, petitioners question whether the reported level of maintenance can continue to meet the requirements of a plant when operating at high production capacity.

Department's Position. We based our COP on the verified actual costs incurred by the respondent during the period of investigation. Since the respondent's accounting practice follows generally accepted accounting principles, which appropriately reflect the company's accounting methods used in the ordinary course of business and which the Department did not find to be distortive, the Department has based its COP on those costs.

Comment 8. Petitioners argue that the Department has made an improper adjustment with respect to the Greek value-added tax ("VAT"). The petitioners state that the Department has added an amount for VAT to the U.S. selling price while also adjusting FMV by the absolute difference between the Greek VAT on home market sales and the VAT added to United States sales. Petitioners contend that the adjustment the Department made on the foreign market side is not authorized as an adjustment for "other differences in circumstances of sale" (19 U.S.C. section 1677b(a)(4)(B)). Moreover, the petitioners cite *Zenith Electronics Corp. v. United States,* 633 F. Supp. 1382 (1986), as evidence that the Court of International Trade has specifically rejected this "circumstances of sale" approach to the treatment of VAT.

Department's Position. The ruling of the Court of International Trade in *Zenith,* now on appeal, does not bar Commerce from making a circumstance of sale adjustment for the differences in VAT between markets. In practice, the Department has routinely recognized that differences in the tax burden on home market and exported merchandise are properly accounted for by making circumstances of sale adjustments for these differences. See *Television Receivers, Monochrome and Color, from Japan,* 53 FR 4050, 4051 (1988); *Color Television Receivers from Korea,* 53 FR 24975, 25976 (1988).

Comment 9. Petitioners argue that home market sales at less than the cost of production should be excluded from the determination of foreign market value.

Department's Position. The Department found no home market sales to be below the cost of production.

Comment 10. Petitioners contend the Department has incorrectly treated a royalty payment made by the respondent as a direct selling expense rather than as a manufacturing expense. Since the royalty expense is related to certain technical production rights being

provided, the expense is more properly recognized as a cost of manufacturing.

Department's Position. Having examined the agreement governing the respondent's royalty payment, we agree with the petitioners and have disallowed this adjustment as a direct selling expense in our final determination. We have treated it instead as a cost of manufacturing.

Comment 11. The petitioners question the accuracy of the export license fee reported per transaction since this amount does not correlate with the total fee divided by the quantities sold.

Department's Position. The total amount reported for each export license fee was verified as was the per kilogram expense listed for several U.S. transactions. The confusion stems from the transportation of two figures in the total export fee reported in the narrative section of the respondent's questionnaire response. Additionally, shipments of smaller quantities were not charged the same fee.

Comment 12. The Department incorrectly calculated the amount to be added to United States price for the applicable Greek VAT that was forgiven upon exportation of the merchandise. Petitioners argue that the tax percentage should be applied on the basis of the ex-mill price of the U.S. merchandise.

Department's Position. The Department verified that the Greek VAT is applied to the selling price of the merchandise inclusive of transportation expenses when the merchandise is sold on delivered terms. Therefore, the Department has properly calculated the applicable VAT on U.S. sales by multiplying the tax percentage by the same tax base used in the home market, *i.e.*, the selling price.

Comment 13. No addition should be made to U.S. price for import duties and taxes rebated or not collected on graphite anodes used in production. Petitioners argue that this adjustment should be denied since the graphite anodes are not raw materials and it is not apparent whether Greek law permits a credit against duties and taxes paid in these circumstances.

Department's Position. The Department verified that import duties and taxes are forgiven by the Greek government on graphite anodes consumed in the production of EMD that is exported. For this reason, we have added to U.S. price those import duties and taxes forgiven on graphite anodes when EMD is exported.

Comment 14. The Department should compute credit expense using Tosoh Hellas' interest rate rather than it's related trading company's interest rate because it could not verify the latter.

Department's Position. We agree and have made the change in our final determination.

Respondent's Comments

Comment 1. Tosoh Hellas reports the date of sale for one of its home market customers should be changed from the previously reported date of the internal sales "contract" to the date of shipment. Respondent states that sales to this customer were made on a spot basis and the quantity within the sales contract was based simply on an estimate to which the customer was not committed.

Department's Position. We accept that the sales "contract" used by the respondent for the home market customer in question is not a contract establishing terms of sale. The "contract" was written by the respondent for its own internal planning purposes and did not commit either party to the terms contained therein. Accordingly, the Department agrees that the appropriate date of sale is the date of shipment for that customer and has made that change in its final determination.

Comment 2. Since sales in the home market of alkaline grade EMD are not viable, the Department should use sales of zinc chloride EMD as the basis of FMV.

Department's Position. Having determined that the combined sales of alkaline EMD and zinc chloride EMD are viable, the Department compared the same grades of merchandise from within that category of sales to the corresponding grades of U.S. merchandise when this was feasible. See the Department's Response to Petitioners' Comment 3.

Comment 3. Respondent argues that since the sales of alkaline grade EMD in the home market were not in the usual commercial quantities, these sales cannot serve as the basis for foreign market value. Respondent cites section 1677b(a)(1), which provides that the foreign market value shall be the price "* * * at which such or similar merchandise is sold * * * in the principal markets of the country from which exported, in the usual commercial quantities * * * for home consumption."

Department's Position. During the period under investigation, we note that U.S. sales of similar quantities were also made. For this reason, we do not agree with respondent's argument regarding the referenced home market sales and have used these sales in determining foreign market value.

Comment 4. Respondent further argues that sales of EMD to this home market customer were made outside the ordinary course of trade and, therefore, should not be used as the basis for FMV. As support for this argument, respondent states that the terms of sale are not consistent with the terms of other sales made in the home market, that the sales price to this customer differs based on this fact, and sales to this customer were not made under terms similar to those employed in the U.S. market.

Department's Position. As stated above, the quantities that were sold to this home market customer are similar in size to sales made to a U.S. customer. Furthermore, in comparing these sales, price appears to vary independently of quantity. Furthermore, the terms of sale for the U.S. sales of similar quantity and those of the home market customer cited differ more because of specific payment terms than for any other reason. Such differences are more reflective of the particular customer's credit history rather than a basis for concluding that sales to that customer are outside the ordinary course of trade. Sales to this home market customer were made at regular intervals throughout the period of investigation and the Department has used these sales in its final determination.

Comment 5. Respondent states that the legal prerequisites for a critical circumstance finding have not been met.

Department's Position. We agree. See the "Negative Determination of Critical Circumstances" section of this notice.

Suspension of Liquidation

Since we have determined that critical circumstances do not exist with regard to this investigation, entries suspended prior to November 14, 1988, the date of publication of the preliminary determination in the **Federal Register**, can now be liquidated and all securities posted as a result of the suspension of liquidation prior to that date will be refunded or cancelled. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of EMD from Greece that are entered, or withdrawn from warehouse, for consumption on or after November 14, 1988. The Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/ exporter	Weighted-average margin percentage
Tosoh Hellas	36.72
All others	36.72

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. However, if the ITC determines that such an injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on EMD from Greece as defined in the "Scope of Investigation" section of this notice, entered or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: February 22, 1989.

[FR Doc. 89-4786 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-419-801]

Electrolytic Manganese Dioxide From Ireland; Final Determination of No Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that electrolytic manganese dioxide from Ireland is neither being, nor is likely to be, sold in the United States at less than fair value. The respondent in this investigation, the sole producer of electroytic manganese dioxide in Ireland, Mitsui Denman Ireland, reported no sales and no outstanding offers for sales during the period of investigation. We have notified the International Trade Commission ("ITC") of our determination.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro (202) 377-1130 or Holly Kuga (202) 377-4733, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that electrolytic manganese dioxide ("EMD") from Ireland is not being, nor is likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) ("the Act"). The Department found no sales, commercial shipments, outstanding contractual obligations for sales, or irrevocable offers for sale to the United States during the period of investigation ("POI") to compare with foreign market value.

Case History

On November 14, 1988, we made a negative preliminary determination (53 FR 45795). The following events have occurred since the publication of that notice.

On November 29, 1988, the petitioners, Kerr-McGee Chemical Corporation and Chemetals Inc., requested that we postpone making our final determination for a period of thirty days pursuant to section 735(a)(2)(B) of the Act. On December 20, 1988, we issued a notice postponing the final determination until February 22, 1989 (53 FR 51129).

The Department conducted a verification of respondent, Mitsui Denman Ireland ("MDI") in Ireland on December 5, 1988, and its related trading company, Mitsui & Co., U.S.A., on December 16, 1988.

On January 23, 1989, the Department held a public hearing. Petitioners and respondent submitted comments for the record in prehearing briefs on January 17, 1989, and in posthearing briefs on February 2, 1989. Additional comments were submitted on January 30 and on February 6 and 9, 1989.

Scope of the Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fuily converted from the Tariff Schedules of the United States Annotated ("TSUSA") to be Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The product covered by this investigation is electrolytic manganese dioxide from Ireland. During the investigation period, such merchandise was classifiable under item 419.4420 of the TSUSA. This merchandise is currently classifiable under HTS item number 2820.10.0000.

EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the investigation.

Period of Investigation

The petitioners requested the Department to extend the POI because the investigation period initially specified by the Department is not representative of levels of EMD exports to the United States from Ireland. Petitioners request that the Department extend the POI to include those sales made by MDI which correspond to United States entries made in the first half of 1987. They argue that this is the appropriate POI since Irish EMD has been exported to the United States in all of the most recent years except the current one, a fact that reflects a mere depression in current sales activity.

The Department has extended the normal six-month POI where that period did not adequately reflect the sales practices of the firms subject to the investigation. For example, where sales were made pursuant to long term contracts, the Department has extended the period in order to include the date of sale corresponding to shipments during the period. See *Certain Forged Steel Crankshafts from the United Kingdom*, 52 FR 32951 (1987). In instances where distortions would have resulted from using a POI limited to six months, as in the case of seasonally-affected sales, the Department has extended the period to eliminate such distortions. See *Certain Fresh Cut Flowers from Colombia*, 52 FR 6842 (1987). The Department has also extended the period in cases where special order or customized sales are under investigation in order to accommodate the unique circumstances involved in investigating this type of merchandise. See *Offshore Platform Jackets and Piles from Japan*, 51 FR 11788 (1986). Finally, the Department has extended the period in cases where sales activity was unusually depressed

resulting in too few sales for an adequate investigation. See *Certain Iron Metal Castings from India*, 46 FR 39869 (1981).

We have determined that there are no factors in this case that would justify an extension of the POI. No shipments of EMD from MDI were made during the POI which correspond to sales made prior to the period nor were the shipments made during 1987 pursuant to long term contracts with U.S. purchasers. Petitioners argue that sales of EMD are greatest in the fall of the year necessitating the extention of the period to capture this peak sales activitity. The evidence for MDI, however, shows that when it supplied the U.S. market, its monthly shipment volume remained constant. This shipment stability is also evidenced by MDI's related Japanese producer. Even if seasonality were a factor and the POI were extended by an additional six months to capture a full year in our investigation, a sufficient period for eliminating distoritions, no sales would be found within that expanded period.

Finally, the circumstances presented in this case do not support a finding of unusually depressed sales sufficient to warrant extension of the POI. There were no U.S. sales or commercial shipments within the POI. The evidence documents that there had been no commercial sales by the respondent in the U.S. market for an extended period of time which did not coincide with any industry-wide depression in EMD demand. MDI continues to have no current contractual obligation outstanding for EMD of Irish origin (see our response to comment 1). Its product has been disqualified by its primary U.S. purchaser (and remains unqualified by other major U.S. purchasers) and must successfully undergo a considerable qualification process to regain approval. Because of the quality problems that have been experienced with MDI's product, completion of qualification is of particular significance. Since these circumstances go well beyond those that would be present for a firm experiencing only "unusually depressed" sales activity, the Department determines that this reason for expanding the POI does not apply in this case.

Fair Value Comparisons

If we were to determine whether sales of EMD in the United States are made at less than fair value, we would have compared the United States price to the foreign market value. However, in the present investigation, we were unable to make this comparison due to the absence of U.S. sales during the period of investigation, December 1, 1987 through May 31, 1988.

Negative Determination of Critical Circumstances

Petitioners alleged that "critical circumstances" exists with respect to imports of EMD from Ireland. Section 735(a)(3) of the Act provides that critical circumstances exists if we determine that there is a reasonable to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we used company specific shipment data for EMD from Ireland. Since there were no commercial shipments made during 1988, we find that imports of the subject merchandise from Ireland have not been massive over a relatively short period of time.

Since we do not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value. Therefore, we determine that critical circumstances do not exist with respect to imports of EMD from Ireland.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant sales records and original source documents provided by the respondent.

Petitioners' Comments

Comment 1. Petitioners contend that MDI's EMD is likely to be sold in the U.S. at less than fair value. In support of this contention, petitioners allege (1) that MDI has made bona fide offers to sell EMD during the POI, and (2) that MDI has been supplying samples for testing and qualification purposes in an attempt to supply the U.S. market.

Department's Position. We disagree with petitioners' conclusion. Section 731 of the Act provides, in part, that in order to find that dumping is occurring the Department must determine that the merchandise subject to investigation "is being, or is likely to be, sold in the United States at less than fair value." "More than a speculative potential of future sales for export is necessary to meet the 'likely to be sold' criterion of section 731 of the Act" *Certain Carbon Steel Products from Czechoslovakia*, 50 FR 1912 (1985). The Department looks for evidence of a current offer, the acceptance of which is reasonably expected. See *Dismissal of Antidumping Petitions on Certain Steel Products from Romania*, 47 FR 5752 (1982). At the very least this requires evidence of an irrevocable offer to sell (*Carbon Steel from Czechoslovakia*).

The Department verified that MDI had no contractual obligations outstanding as of the date our verification was completed, December 16, 1988. Information regarding an April 1988 meeting with a potential customer has been carefully evaluated by the Department. There was no signed, written offer by MDI specifying the price and quantity at which it would sell EMD. No promise was made to hold any offer open for a period of time. The evidence is unclear as to whether quantity terms were specified; price was discussed in relation to a competitive level at an unspecified point in time. Moreover, any agreement that might have been made was subject to successful qualification of MDI's EMD, which requires several months of additional testing. We have determined that discussions at that meeting did not reach the level of an irrevocable offer. Even assuming, *arguendo*, that some form of bona fide offer existed at that time, ten months have passed since this meeting without further action by either party. If this were the case, any reasonable time period for holding an offer open would have expired.

Finally, supplying samples of EMD in an attempt to qualify MDI's merchandise does not constitute "likelihood of sales" for purposes of the antidumping law. The qualification process for EMD is complex and time consuming, requiring at minimum a six month testing period. Irish EMD has been and remains disqualified by one major U.S. purchaser and unqualified by other potential major U.S. purchasers; qualification is a necessary requirement

of battery producers prior to commercial purchase of the subject merchandise. Any likelihood of future sales, pending successful qualification of MDI's EMD, is too speculative for the Department to consider them as sales during the POI.

Comment 2. Petitioners contend that the special rule for multinational corporations contained in section 773(d) of the Act should be applied to calculate the foreign market value of MDI's EMD.

Department's Position. Since we have determined that MDI did not sell EMD to the United States during the POI, nor was there a likelihood of such sales, we did not calculate foreign market value.

Comment 3. Petitioners contend that the Department should determine the appropriate margin based upon the information submitted by petitioners as the best information available.

Department's Position. The respondent has furnished, in proper form, all information requested by the Department. Based on the information reported, and which we have deemed adequate, we have determined that MDI did not sell EMD, nor was there a likelihood of such sales, to the U.S. during the POI. For these reasons, the Department has no reason to resort to the use of best information available as suggested by the petitioners.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Date: February 22, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-4787 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-806]

Final Determination of Sales of Less Than Fair Value: Electrolytic Manganese Dioxide From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that electrolytic manganese dioxide from Japan is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of electrolytic manganese dioxide from Japan. The U.S. International Trade Commission (ITC) will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill (202) 377-1130 or Holly Kuga (202) 377-4733, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that electrolytic manganese dioxide ("EMD") from Japan is being, or is likely to be, sold in the United States at less than fair value as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margin of sales at less than fair value is shown in the "Suspension of Liquidation" section of this notice.

Case History

The petitioners in this investigation, Kerr-McGee Chemical Corporation and Chemetals Incorporated, are manufacturers of EMD. The respondents, who account for virtually all of the exports to the United States, are Mitsui Mining and Smelting ("MMS") and Tosoh Corporation ("Tosoh").

On November 14, 1988, we made an affirmative preliminary determination (53 FR 45796). The following events have occurred since the publication of that notice.

On November 21, 1988, Tosoh requested that we postpone making our final determination for a period of thirty days pursuant to section 735(a)(2)(A) of the Act. On December 20, 1988, we issued a notice postponing the final determination until February 22, 1989 (53 FR 51130).

The questionnaire responses from MMS and Tosoh were verified in Japan between November 28 and December 9, 1988.

Petitioners and respondents submitted written comments for the record on January 25 and 31, 1989.

Scope of the Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the Tariff Schedules of the United States Annotated ("TSUSA") to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The product covered by this investigation is electrolytic manganese dioxide from Japan. During the period of investigation ("POI"), such merchandise was classifiable under item 419.4420 of the TSUSA. This merchandise is currently classifiable under HTS item number 2820.10.0000.

EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the investigation.

Fair Value Comparisons

To determine whether sales of EMD in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. We made comparisons on all sales of the product during the period of investigation December 1, 1987 through May 31, 1988.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for all sales made by MMS and Tosoh. We used purchase price as the basis for determining United States price since the merchandise was sold to an unrelated purchaser in Japan with the knowledge that that purchaser would then export the merchandise to the United States.

Purchase price was based on the F.O.B. (foreign port) and ex-godown price to unrelated purchasers in Japan. Where applicable, we made deductions for foreign inland freight, brokerage and handling, and certain other movement expenses.

Foreign Market Value

In accordance with section 773(a) of the Act, we determined that there were sufficient home market sales of such or similar merchandise by both MMS and Tosoh to form the basis for foreign market value.

Home market price was based on the delivered price to unrelated purchasers in the home market. We deducted inland freight and home market packing, and added U.S. packing. We made a circumstance of sale adjustment for differences in credit between the two markets.

Negative Determination of Critical Circumstances

Petitioners allege that imports of EMD from Japan present "critical circumstances." Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we based our analysis on the verified shipment data of the Japanese respondents, for equal periods immediately preceding and following the filing of the petition until the month of our preliminary determination. In the case of MMS, shipments declined during the five month period between the petition and the preliminary determination. Tosoh's shipments increased less than the 15 percent considered to be indicative of massive imports. Based on the above, we find that there is no reasonable basis to conclude that imports of EMD have been massive over a relatively short period.

Since we do not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value. Therefore, we determine that critical circumstances do not exist with respect to imports of EMD from Japan.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Petitioners' Comments

Comment 1. Petitioners state that MMS' foreign market value should be based on its home market sales of both types of alkaline EMD. Petitioners state that the two types of alkaline EMD sold in the home market are identical within the meaning of the antidumping statute.

Department's Response. The Department disagrees. MMS provided us with additional information at verification from which we were able to determine that the two types of alkaline EMD are similar, not identical merchandise. One of the two types of EMD sold in the home market was identical to that sold in the U.S. market. We based the foreign market value on sales of that identical merchandise in the home market.

Comment 2. Petitioners contend that a rebate granted by MMS in the home market is a quantity discount which should not be allowed as a deduction by Commerce. Alternatively, petitioners contend that if the deduction is granted, the Department should make a circumstance of sale adjustment in order to reflect price differences resulting from the quantities being sold in both markets.

Department's Response. We disagree. The Department has verified that the adjustment in question is a rebate, *i.e.*, a pre-established post-sale credit or refund based upon meeting certain conditions established between the buyer and the seller at the time of sale. That the condition for obtaining the rebate in this case is based on the cumulative quantity sold does not alter this fact. Even if this was a quantity-based discount, petitioners have not provided the basis for making their proposed adjustments.

Comment 3. Petitioners state that the Department should calculate the dumping margin for MMS based on a dollar denominated U.S. price with any yen denominated adjustments converted at the prevailing exchange rate on the date of sale. To do otherwise, would allow the respondent to artificially reduce the margins by manipulating the exchange rate conversions.

Department's Response. MMS is paid in yen by its unrelated Japanese distributor for its U.S. sales. Foreign market value is also yen-denominated. Therefore, there is no need for currency conversions in performing the dumping calculation. The yen amount MMS receives for its U.S. sales does depend on the exchange rate. However, because the trading company is paid in dollars and then pays MMS using the exchange rate in effect on the date of payment, that date of payment, and therefore the exchange rate used, is determined by the trading company, not MMS. Therefore, we do not see how MMS is able to manipulate its margins through currency conversions.

Comment 4. Petitioners contend that the date of sale for a certain U.S. customer should be the date of the purchase order rather than the date of the contract which predates the POI. Alternatively, the POI should be extended back to include this sale.

Department's Response. The Department determined that the sale terms for the U.S. customer in question were established in a contract which was entered into prior to the date of the POI. This was verified through sales documentation which established a fixed price as well as the specific shipping schedule for each transaction. The Department feels no need to expand the POI to include this transaction since the Department has reviewed 89 percent of Tosoh's shipments and all of their U.S. sales that occurred during the six-month POI.

Comment 5. Petitioners state that Tosoh should report its U.S. prices in dollars, not yen.

Department's Response. We disagree. Tosoh reported its prices in the currency in which it was paid, as requested by the Department in its questionnaire.

Comment 6. Petitioners claim that the Department should not deduct the double payment of rebate incorrectly paid by Tosoh on one of its sales.

Department's Response. The Department verified the amount of rebate paid on home market sales. On the sale in question, the Department verified that, due to a billing error, a rebate was paid twice. Since the customer did not return the second, erroneous rebate payment, the Department believes that a deduction, in the full amount of the rebate actually paid on that transaction, should be allowed.

Comment 7. Petitioners state that Tosoh's credit expenses must be calculated on the basis of gross price less discount in order to reflect the true

cost of extending credit to its customers between shipment and final payment.

Department's Response. The Department agrees. We have subtracted the discount from the gross price before calculating the credit expense.

Comment 8. Petitioners state that the Preliminary Determination of Critical Circumstances must be affirmed in the final determination based upon Tosoh's massive imports during the three month period following the petition and its knowledge of dumping.

Department's Response. The Department disagrees. (See the "Negative Determination of Critical Circumstances" section of this notice.) The period for determining massive imports in this investigation is the five month period between the filling of the petition and the preliminary determination not the three month period following the petition. The Department uses this period between the filing of the petition and the preliminary determination to determine whether there are massive imports since this is the period in which respondents could take advantage of their knowledge of the dumping case to increase exports to the United States without being subject to antidumping duties. See *Certain Internal-Combustion, Industrial Forklift Trucks From Japan,* 53 FR 12552, 12566 (1988). During this time, Tosoh's shipments to the United States increased less than the 15 percent increase considered to be indicative of massive imports. Therefore, we have determined that imports during the period have not been massive and that the requirements for determining critical circumstances have not been met.

Respondents' Comments

Comment 1. Tosoh claims that the legal requirements for critical circumstances have not been met. Specifically, Tosoh claims that the increase in its shipments to the U.S. during the five month period between the petition and suspension of liquidation do not meet the Department's definition of "massive imports." Furthermore, Tosoh claims that its increase is overstated because it includes EMD shipped under long-term contracts outside the POI.

Department's Response. The Department agrees that the requirements for an affirmative determination of critical circumstances have not been met. (See the "Negative Determination of Critical Circumstances" section of this notice.)

Suspension of Liquidation

Since we have determined that critical circumstances do not exist with regard to this investigation, entries suspended prior to November 14, 1988, the date of publication of the preliminary determination in the **Federal Register**, can now be liquidated and all securities posted as a result of the suspension of liquidation prior to that date will be refunded or cancelled. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries EMD from Japan that are entered or withdrawn from warehouse, for consumption on or after November 14, 1988. The Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until futher notice.

The weighted-average margins are as follows:.

Manufacturer/producer/exporter	Weighted-average margin percentage
Mitsui Mining and Smelting	77.43
Tosoh Corporation	71.91
All others	73.30

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. However, if the ITC determines that such an injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty order directing Customs officers to assess an antidumping duty on EMD from Japan as defined in the "Scope of Investigation" section of this notice, entered or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: February 22, 1989.

[FR Doc. 89-4788 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-801]

Preliminary Determination of Sales at Not Less Than Fair Value: Steel Wheels From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that steel wheels from Brazil are neither being, nor are likely to be, sold in the United States at less than fair value. We have notified the International Trade Commission of our determination. If this investigation proceeds normally, we will make a final determination by May 10, 1989.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION: Contact J. David Dirstine (202) 377-5255 or Anne D'Alauro (202) 377-2923, Office of Antidumping Compliance, Import Administration, International Trade Administraiton, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination.

We preliminarily determine that steel wheels from Brazil are neither being, nor are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the "Act").

Case History

Since the notice of initiation, (53 FR 32267, August 24, 1988), the following events have occurred. On September 12, 1988, the International Trade Commission ("ITC") found that there is a reasonable indication that imports of steel wheels from Brazil are materially injuring, or threatening material injury to, a U.S. industry (USUTC Pub. No. 2124, September 1988).

On September 6, 1988, we presented questionnaires to Borlem S.A. Empreendimentos Industriais ("Borlem S.A.") and Rockwell-Fumagalli ("Fumagalli"), manufacturers of steel wheels from Brazil. On September 23, 27, October 24, November 1, 10, and December 1, 6, 1988, we received replies to the questionnaires.

On November 18, 1988, we presented a questionnaire to Borlem do Nordeste S.A. Empreendimentos Industriais ("BNE"), a subsidiary of Borlem S.A. We received replies to the questionnaire on December 1 and 28, 1988.

On December 12, 1988, the petitioner, Kelsey-Hayes Company, requested that the Department extend the period for

the preliminary determination until not later than 210 days after receipt of the petition in accordance with section 733(c)(1)(A) of the Act.

Verification of the responses was conducted from January 16 through February 3, 1989 and on February 8, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

The products covered by this investigation are steel wheels, assembled or unassembled, consisting of a disc and a rim, designed to be mounted with both tube type or tubeless pneumatic tires, in wheel diameter sizes ranging from 13.0 inches to 16.5 inches, inclusive, and generally for use on passenger automobiles, light trucks, and other vehicles. During the period of investigation, such merchandise was classifiable under item under 692.3230 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 8708.70.60. The HTS number is provided for convenience and Customs purposes. The written description remains dispositive.

In a submission dated September 28, 1988, Borlem S.A., a respondent company, argued that rims imported separately are not within the scope of the investigation. In submissions dated October 7, 1988 and October 12, 1988, the petitioner argued that rims imported separately and sold as "distinct articles of commerce" are not within the scope of the investigation, but that rims imported separately as a means of circumvention are within the scope of the investigation. In a submission dated October 21, 1988, the petitioner, as well as NI Industries, a domestic interested party, argued that rims imported separately are within the scope of the investigation.

For purposes of the preliminary determination, we have treated rims or discs, whether imported separately or together, as included in the scope of this investigation.

Period of Investigation

Sales of steel wheels to original equipment manufacturers ("OEMs") account for more than 60 percent of imports of the subject merchandise into the United States from Brazil. Steel wheels are normally sold to OEMs in the United States on the basis of long-term requirements contracts. We found that shipments to the United States by Fumagalli during the February 1–July 31, 1988 investigation period were pursuant to agreements executed in November 1986. Therefore, under § 353.38(a) of our regulations, we extended the period of investigation for Fumagalli to seven months by including November 1986 as well. See *Certain Forged Steel Crankshafts from Japan*, 52 FR 17999 (1987) and *Certain Granite Products from Italy*, 53 FR 27187 (1988). The period of investigation for Borlem S.A. and BNE is February 1, 1988 through July 31, 1988.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price for sales of wheels to OEMs with foreign market value for sales of wheels to OEMs in Brazil. Since there were no viable rim sales in the home market or third countries, we compared the United States price for rim sales to BNE's sole U.S. rim customer, an unrelated wheel customizer, with a foreign market value based on constructed value.

Although not expressly required by the Act, the Departmet has a long-standing practice of calculating a separate dumping margin for each manufacturer or exporter investigated. We have concluded, however, that, for purposes of this investigation, Borlem S.A. and BNE are not separate, and that it is appropriate to calculate a single, weighted-average margin for Borlem S.A. and BNE.

The administrative record establishes that Borlem S.A. holds over 95 percent of the voting capital and over 73 percent of the total capital of BNE. Since the vice president of Borlem S.A. is the president of BNE and the financial director of Borlem S.A. is financial director of BNE, there is common access to pertinent sales and manufacturing information. Even though each company maintains separate manufacturing facilities and sales operations, the production facilities at both companies consist of similar types of equipment. Therefore, it would not be necessary to retool extensively either plant's facilities before implementing a decision to restructure either company's manufacturing priorities. Given these facts, it would be incorrect to conclude that these entities constitute two separate manufacturers or exporters under the dumping law. See *Certain Granite Products from Spain*, 53 FR 24337 (1988).

United States Price

As provided in section 772(b) of the Act, we used purchase price to represent the United States price for sales of steel wheels made by Borlem S.A. to an unrelated purchaser prior to importation of the merchandise into the United States.

The Department also determined that purchase price and not exporter's sales price was the most appropriate indicator of United States price for Fumagalli based on the following elements:

1. The merchandise was purchased or agreed to be purchased prior to the date of importation from the manufacturer or producer of the merchandise for exportation to the United States.

2. The selling agent located in the United States acted only as a processor of sales-related documentation and as a communication link with the unrelated U.S. buyers.

3. The wheels sold to OEMs were made-to-order and not sold through inventory. Although a party related to the seller took title to the wheels and held them in its warehouse after the sale was made, this was only to accommodate the "just-in-time" delivery terms stipulated in the requirements contract negotiated between the Brazilian producer and the U.S. OEM purchaser. All terms of the sale were settled in this contract and were not changed by the related party when it released the wheels to the U.S. OEM purchaser.

4. Warehousing for "just-in-time" delivery was the customary channel of trade for wheels sold by Fumagalli to the U.S. OEM purchaser.

We calculated purchase price based on the packed ex-factory prices to unrelated purchasers in the United States. Where appropriate, we made deductions for brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. duty, and U.S. inland freight. In accordance with section 772(d)(1)(C) of the Act, we made additions for indirect taxes not collected by reason of the exportation of the merchandise.

Foreign Market Value

We calculated foreign market value for wheel sales by Fumagalli and Borlem S.A. based on home market packed prices to unrelated purchasers in

accordance with section 773(a) of the Act.

When basing foreign market value on home market prices, we made deductions, where appropriate, for inland freight, and inland insurance. We deducted the home market packing cost and added U.S. packing costs. We made circumstance of sale adjustments for differences in credit, post-sale warehousing expenses, and indirect taxes between the two markets.

In accordance with section 773(a)(4)(C) of the Act, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise where there were no identical products in the home market with which to compare products sold in the United States. These adjustments were based on differences in the costs of materials, direct labor and factory overhead.

In accordance with section 773(a)(2) of the Act, we used the constructed value of the exported merchandise to determine foreign market value for BNE, since no viable home market or third country rim sales were found during the period of investigation. The constructed value was based upon the most recent information submitted by BNE and included adjustments for calculation errors noted by the company prior to the verification.

Section 773(e)(1)(A) of the Act directs that foreign market value shall be constructed as of the date of exportation. At the same time, however, § 353.56(a)(1) of our regulations requires that currency conversions for "purchase price" transactions be made using the exchange rate in effect on the date of the U.S. sale. Previous investigations have shown that in hyperinflationary economies, when the date of sale occurs in a month preceding the date of shipment, application of the earlier date of sale exchange rate may result in distortions. Nominal increases in cost between the date of sale and the date of shipment are accounted for by using monthly replacement costs to construct foreign market value; however, the decreased value of the currency, in which those costs are expressed, remains unadjusted.

In consideration of the above, we calculated foreign market value for BNE using the exchange rate in effect on the date of sale as prescribed in our regulations. In addition, a circumstance of sale adjustment was made prior to currency conversion, eliminating the artificial distortion of value caused by the rapid devaluation of Brazil's currency. See *Tubeless Steel Disc Wheels from Brazil*, 53 FR 34566 (1988).

Currency Conversion

When calculating foreign market value, we normally make currency conversions in accordance with § 353.56 of our regulations, using the certified exchange rates furnished by the Federal Reserve Bank of New York. Since the Federal Reserve Bank of New York stopped providing exchange rate information for Brazil prior to the period of this investigation, we used the monthly exchange rates provided by the International Monetary Fund.

Verification

The verification was conducted from January 16 through February 3, 1989 and on February 8, 1989, using standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondents. With the exception of BNE, the information used in reaching the preliminary determination in this investigation was based upon data reviewed during our verification.

Our verification of BNE's submitted constructed value data was also conducted during the above stated period. Pending further review of this complex constructed value data, we have based BNE's preliminary determination upon the company's submitted constructed value data. The continuing review of the verification results and constructed value data may lead to decisions which produce results differing from these preliminary results.

Our verification reports will be available to all parties for comment shortly after publication of this preliminary notice.

Preliminary Results

We preliminarily determine that steel wheels from Brazil are neither being, nor are likely to be, sold in the United States at less than fair value as provided in section 733 of the Act.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, a United States industry.

Public Comment

In accordance with § 353.47 of the Department's regulations, if requested within ten days of publication of this notice, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m., on April 10, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the prehearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: February 24, 1989.

[FR Doc. 89-4897 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-406]

Fabricated Automotive Glass From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on fabricated automotive glass from Mexico. We preliminarily determine the total bounty or grant to be zero for the period January 1, 1986 through December 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 02030; telephone: (202) 377–2788.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 44652) the final results of its last administrative review of the countervailing duty order on fabricated automotive glass from Mexico (50 FR 1906; January 14, 1985). On January 28, 1987 and January 30, 1987, PPG Industries and the Government of Mexico, respectively, requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on February 23, 1987 (52 FR 5479). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Mexican fabricated automotive glass, including tempered and laminated automotive glass. During the review period, such merchandise was classifiable under items 544.3100 and 544.4120 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 7007.11.00, 7007.19.00, 7007.21.00 and 7007.21.50. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1986 through December 31, 1986 and 14 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to Mexican exporters and U.S. importers for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to confer export bounties or grants since these loans are given at preferential rates only on merchandise destined for export.

The exporters were able to tie both types of FOMEX loans to their exports to specific countries. We verified that the two known exporters of this merchandise did not receive any FOMEX loans on shipments to the United States during the review period. Therefore, we preliminarily determine that there was no benefit from this program during the review period.

(2) FICORCA

On December 20, 1982, the Government of Mexico and the Banco de Mexico established the Trust Fund for Coverage of Risks ("FICORCA"), which operates through credit institutions. All Mexican firms with registered long-term debt in foreign currency and payable abroad to foreign financial institutions or suppliers were able to purchase, at a controlled rate, the amount in dollars necessary to pay the principal on that debt.

In *Unprocessed Float Glass from Mexico, Countervailing Duty Determination* (49 FR 23097; June 4, 1984), we determined that the FICORCA program was available to all Mexican firms with foreign indebtedness and that it was not targeted to a specific industry or region, and that it was not tied to exports. During the first administrative review of this countervailing duty order, we reinvestigated the FICORCA program and reaffirmed our determiniation that it is not countervailable. (*See, Fabricated Automotive Glass from Mexico; Final Results of Countervailing Duty Administrative Review* (51 FR 44652; December 11, 1986)).

The petitioner, PPG Industries, Inc. ("PPG"), requested that the Department reevaluate FICORCA in light of new information and/or changes to existing regulations. PPG asserts that: (1) Capitalization of unpaid interest on FICORCA debt provides a benefit equalling the difference between what the auto glass companies would have paid in the commercial sector and the amounts they actually paid; (2) special permission from the Mexican government is required to enroll nonbank debt, such as commercial paper, in FICORCA; (3) the Mexican government allowed companies in the Vitro group to provisionally enroll unrescheduled debt in the program; (4) companies in the Vitro group converted a portion of the FICORCA debt into floating rate notes to avoid the 15 percent withholding tax levied on interest payments; and (5) Mexican firms with foreign debt enrolled in FICORCA could capitalize this debt and benefit from the sale of their FICORCA contracts.

All FICORCA contracts are structured so that regular, minimum interest payments are required. In the early stages of the loan, the minimum payment is less than the interest payment due. The remaining unpaid interest is capitalized and added to the outstanding principal. As a result, the debt increases and subsequent interest payments are computed based on a larger balance. In the latter stages of repayment, the firm is faced with a balloon payment and higher interest amounts. We find no benefit with this method of payment because the firm is not relieved of any debt obligations. The capitalization of interest is no different from what would happen on a commercial loan.

According to the terms of the FICORCA regulations, there is no special permission required to enroll nonbank debt. Mexican firms with foreign debt payable to banks, finance companies or suppliers, were eligible to participate in the FICORCA program.

When the period for registering debt into FICORCA closed, some companies had not yet concluded their FICORCA negotiations. The creditors issued a "provisional" notice that the debt was in a rescheduling process, which many firms referred to as provisional enrollment in FICORCA. The Vitro group reported long-term foreign debt "provisionally" enrolled in FICORCA in notes to its 1984 financial statements. This merely meant that, until the creditors submitted a written statement

to FICORCA advising that the debt had been rescheduled, FICORCA contracts would not be issued to the company or group. As stipulated in the FICORCA regulations, foreign debt had to be rescheduled prior to enrollment in the FICORCA program.

On fixed-interest rate notes, the Mexican government taxes the interest income of the foreign bank at the rate of 15 percent, so that 15 percent of the company's interest payment goes to the Government of Mexico and 85 percent goes to the foreign bank. Floating rate notes are exempt from the 15 percent tax on interest income, and all of the interest paid on floating rate notes goes to the foreign bank. In either case, the Mexican firms continue to pay the full amount of the interest. Therefore, we preliminarily determine that there is no benefit to Mexican firms in the conversion of FICORCA debt into floating rate notes.

FICORCA contracts are negotiable instruments. As such, FICORCA does not participate in the transfer or sale of such contracts and only requires that the new firm have foreign debt registered with the Secretaria de Hacienda y Credito Publico. Approval from the foreign creditor must also be obtained. When a FICORCA contract is sold, a new contract is not issued to the new firm, and the terms and conditions on the original contract remain in force.

The information PPG presented on new programs or changes to existing programs contains various features of the FICORCA program that are part of the original regulations. We believe that this information does not change the Department's understanding of the operation of the program or the reasoning that led to our decision in the final determination in float glass and in the final results of the first administrative review of automotive glass. Therefore, we preliminary reaffirm our prior determination that FICORCA is not countervailable.

(3) Other Programs

We also examined the following programs and preliminary determine that neither company used them during the review period:

(A) CEPROFI;
(B) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN");
(C) Fund for Industrial Development ("FONEI");
(D) Import duty drawback;
(E) National Development Program preferential discount;
(F) Article 15/94 loans;
(G) Preferential state investment incentives;
(H) State tax incentives;
(I) NAFINSA loans;
(J) BANCOMEXT loans;
(K) Debt/Equity swaps;
(L) CEDI tax certificates; and
(M) CEDI's for foreign trade consortia.

Preliminary Results of Review

As a result of our review, we preliminary determine the total bounty or grant to be zero for 1986.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

Further, the Department intends to instruct the Customs Service to waive deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the following workday. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10

Date: February 23, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-4898 Filed 3-1-89; 8:45 am]
BILLING CODE 3510-DS-M

[C-122-805]

Preliminary Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers, manufacturers or exporters in Canada of new steel rail, except light rail, ("steel rail") as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 103.55 percent *ad valorem* for all manufacturers, producers or exporters in Canada of steel rail, except the Algoma Steel Corporation Ltd. (Algoma), which is excluded from this preliminary determination. The estimated net subsidy for Algoma is 0.05 percent *ad valorem*, which is *de minimis*. We have calculated a separate estimated net subsidy for Algoma because its rate differs significantly from the country-wide rate. If this investigation proceeds normally, we will make a final determination on or before May 9, 1989.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Canada of steel rail. For purposes of this investigation, the following programs are preliminarily found to confer subsidies:

Federal Programs

- Debenture Guarantees Provided to Sydney Steel Corporation (Sysco).
- Forgiven Wharf Loan.
- Regional Development Incentives Program.
- Certain Investment Tax Credits.

Joint Federal-Provincial Programs

- General Development Agreements.
- Ecomomic and Regional Development Agreements.

Provincial Programs

- Operating Grants Provided to Sysco.
- Long-Term Loan Guarantees Provided to Sysco.
- Equity Infusions Provided to Sysco.

We preliminarily determine the estimated net subsidy to be 103.55 percent *ad valorem* for all manufacturers, producers or exporters in Canada of steel rail, except Algoma, which is excluded from this preliminary determination.

Case History

Since the publication of the Notice of Initiation in the **Federal Register** (53 FR 41394, October 21, 1988), the following events have occurred. On October 27, 1988, we presented a questionnaire to the Government of Canada in Washington, DC, concerning petitioner's allegations. On November 17, 1988, petitioner filed a request that the preliminary determination be postponed. Pursuant to section 703(c)(1)(A) of the Act, we postponed the preliminary determination to no later than February 23, 1989 (53 FR 49582, December 8, 1988).

On December 8, 1988, we received responses from the Government of Canada (GOC), the Provincial Governments of Nova Scotia (GONS) and Ontario, Sysco and Algoma. The response of the GOC listed five non-producer exporters of steel rail to the United States: Grand Valley Steel Ltd., Nortrack Ltd., Sessenwein Inc., C.P. Rail Ltd. and Bernard Railtrack Export Inc. We requested that these exporters answer the original questionnaire.

On December 23, 1988, we delivered a supplemental/deficiency questionnaire to the GOC. On January 13, 1989, we received responses from the GOC, GONS, and the Government of Ontario to the supplemental/deficiency questionnaires, and responses to the original questionnaire from the following three non-producer exporters: Grand Valley Steel Ltd., Nortrack Ltd. and Sessenwein Inc. On January 18, 1989, we received responses to our supplemental/deficiency questionnaire from Algoma, Sysco and Algoma Central Railway.

On February 10, 1989, we delivered an additional supplemental/deficiency questionnaire to the GOC requesting further information from the GOC, GONS and Sysco. On February 17, 1989, we received responses from the GONS and Sysco to this questionnaire. On February 21, 1989, we received the response from the GOC.

On February 21, 1989, we also received a response to our original questionnaire from C.P. Rail Ltd., the fourth non-producer exporter of steel rail. We have not received a response from Bernard Railtrack Export Inc., the remaining non-producer exporter of steel rail.

On January 17, 1989, we received further subsidy program allegations from petitioner. We declined to initiate an investigation on these additional programs and have informed all interested parties of our decision.

Scope of Investigation

The products covered by this investigation are new steel rail, except light rail, currently classifiable under HTS item numbers 7302.10.1020, 7302.101.1040, 7302.10.5000, and 8548.00.0000.

Steel rail, whether of carbon, high carbon, alloy or other quality steel, includes but is not limited to, standard rails, all main line sections (over 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rail (or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines and in industrial applications.

Specifically excluded from this investigation are light rails which are 60 pounds or less per yard. Also excluded are relay rails which are used rails taken up from a primary railroad track and relaid in a railroad yard or on a secondary track.

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring subsidies ("the review period") is calendar year 1987 for Algoma and April 1, 1987–March 30, 1988 for Sysco. These review periods correspond to the respective companies' fiscal years. Normally, we would select the calendar year as the review period for all companies if the companies under investigation had different fiscal years. We have chosen Sysco's fiscal year as that company's review period in order to measure more accurately the subsidies received over time, which have been reported to the Department on a fiscal year basis.

Petitioner alleged that Sysco is unequityworthy and uncreditworthy. We have consistently held that the government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company was a reasonable commercial investment or, in other words, whether the company was "equityworthy."

The GONS is the sole owner of Sysco, which it purchased in 1968. Sysco has never issued shares; therefore, we must determine whether Sysco was equityworthy in each instance when the GONS made an equity infusion. We do not reach the question of whether Sysco was equityworthy in 1968. The initial purchase of Sysco by the GONS occurred prior to the 15 year period in which we are examining all the financial assistance received by Sysco which may have benefited the company during the review period. We are using 15 years because it represents the average useful life of assets in the steel industry as determined by the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. (Use of the IRS tables is in accordance with past practice and is described in detail in the "Subsidies Appendix" attached to the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel and Flat-Rolled Products from Argentina*, 49 FR 18006, April 26, 1984 (*Subsidies Appendix*).)

Although Sysco's equityworthiness in 1968 and the GONS's equity infusion in 1968 will not be examined, the GONS made additional equity infusions into Sysco in the period 1977–1988. Therefore, we have preliminarily determined Sysco's equityworthiness in each year in which it received equity capital from the GONS.

A company is considered unequityworthy if it is deemed unable to generate a reasonable rate of return within a reasonable period of time. In making our equityworthiness determinations, we assess the company's current and past financial health, as reflected in various financial indicators taken from its financial statements, and where appropriate, internal accounts. The indicators we examine include the following ratios: rate of return on equity, gross margin to sales, financial expenses to sales, the current ratio and debt to equity. We give great weight to the company's recent rate of return on equity as an indication of financial health and prospects. Based on the factors described above, we preliminarily determine that Sysco was unequityworthy in each year in which it received an equity infusion in the period from 1977–1988.

Petitioner's other broad allegation is that Sysco is uncreditworthy. We consider a company creditworthy if it appears that it will have sufficient revenues or resources to meet its costs and fixed financial obligations, absent government intervention. Like our equityworthiness test, to determine the creditworthiness of a company we analyze the company's present and past health, as reflected in various financial

indicators calculated from its financial statements. We give great weight to the company's recent past and present ability to meet its financial cost obligations with its cash flow. Based on an analysis of the factors described above, we preliminarily determine Sysco to be uncreditworthy for the period from 1973 to 1988.

We have preliminarily determined that Sysco is uncreditworthy despite the fact that it has received financing from private commercial sources. We are discounting the importance of such financing because it appears that Sysco would not have recieved this financing but for the guarantees provided by the GOC and the GONS.

With respect to the calculations of benefits from grants and government loan and debenture guarantees received by Sysco, we used as the discount rate for allocating the benefits over time the benchmark interest rate calculated for purposes of analyzing the interest rate on Sysco's debentures and loans which were guaranteed by either the federal or provincial government (see sections I.A.1. and I.C.2.). We were unable to use Sysco's weighted cost of capital, which is our preferred method of deriving the discount rate, for the following reasons. In the years 1973–1976, we do not have information on the national average rate of return on equity. In the years 1977–1988, either Sysco's equity as a percent of total capitalization was negative or Sysco's capitalization in its entirety was negative. Consequently, we could not meaningfully employ our weighted cost of capital formula.

Sysco received grants or equity infusions, which we are treating as grants (see section I.C.3.), in every year during the period 1974–1988. In accordance with past practice (see *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada*, 51 FR 15037, April 22, 1986 (*OCTG*)), for all the programs which provided non-recurring grants and for all the benefits received by Sysco which we treated as non-recurring grants, we first determined if the benefit amount received by Sysco, in each of the years in which the benefit was received, was more than 0.50 percent of the company's total sales for that year. In every year, the benefit amount exceeded the 0.50 percent rate; therefore, for all of the grants and equity infusions received by Sysco, unless otherwise specified, we allocated the benefit over the average useful life of equipment in the steel industry which is 15 years. Using the above methodology, we also allocated over 15 years, unless otherwise specified, the benefit from the grants received by Algoma.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and a program is otherwise countervailable, the program will be considered a subsidy in the final determination.

As mentioned in the "Case History" section above, we have received questionnaire responses from two producers and four non-producer exporters. Each of the respondent non-producer exporters has denied the direct receipt of benefits from the programs under investigation. Therefore, the steel rail exports of each respondent non-producer exporter will be subject to the estimated net subsidy of the producer from which it purchased the steel rail. As the best information available, we are assigning the estimated net subsidy rate of Sysco to the non-respondent non-producer exporter, Bernard Railtrack Export Inc.

I. Programs Preliminarily Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers or exporters in Canada of steel rail under the following programs:

A. Federal Programs

1. Debenture Guarantees Provided so Sysco

Petitioner alleged that the federal and provincial governments have provided loan guarantees to Sysco. (Provincial loan guarantees are discussed in sections I.C.2. and II.A.). According to Sysco's questionnaire response and its financial statements, in the years 1974–1976, Sysco issued two debenture series; one was guaranteed by the Cape Breton Development Corporation (Devco), a crown corporation of the GOC, and the other was guaranteed by the GONS. The series guaranteed by Devco was denominated in Canadian dollars; the series guaranteed by the GONS was denominated in U.S. dollars. (Both guarantees will be discussed in this section). No fee was paid for these guarantees.

These guarantees were provided to a specific enterprise, therefore, we preliminarily consider that they are countervailable for the following reasons. According to the questionnaire responses, a fee would not have been charged for a commercial guarantee similar to the guarantees provided by the federal and provincial governments. However, we are skeptical that a firm in the same financial position as Sysco would have been able to obtain such a guarantee. Therefore, for purposes of this preliminary determination, we analyzed the extent to which Sysco was able to issue the debentures on terms more favorable than the benchmark financing.

As described in the "Analysis of Programs" section above, we have preliminarily determined that Sysco has been uncreditworthy throughout the period 1973–1988. In the case of uncreditworthy companies, we assume that private lenders either would not provide loans to such companies or would require a premium interest rate. In selecting an appropriate benchmark, we must formulate an approximation of the premium interest rate a commercial source of financing would charge an uncreditworthy company (see the *Subsidies Appendix*). The first step in the formulation of such an interest rate is to determine the highest commonly-available commercial interest rate a creditworthy borrower would have to pay in order to receive a loan. This interest rate is the rate that would be charged a marginally creditworthy company.

The next step is the calculation of a risk premium. This amount represents the difference in risk between a marginally creditworthy company and an uncreditworthy company. In previous cases (See *Certain Carbon Steel Products from Brazil; Final results of Countervailing Duty Administrative Review*, 52 FR 829, January 9, 1987), we have derived this risk premium by examining the difference between *Moddy's* Aaa and Baa corporate bond rates and calculating the percentage this difference represents of the prime interest rate in the United States. We have found that the risk premium as calculated by this approach is 12 percent. If the financing is not in U.S. currency, this percentage is then applied to the prime interest rate in the country concerned to get a comparable measure of the risk premium in the local economy. The final step in our calculation of the appropriate benchmark for an uncreditworthy company is to add the risk premium to the highest long-term commercial

interest rate commonly-available to companies in the country in question.

For the debentures denominated in Canadian dollars, we calculated the benchmark interest rate as described below. According to the federal government response, the Canadian government does not maintain statistics on the highest long-term commercial interest rate commonly-available to companies. Therefore, for purposes of the first step of our calculations we chose a surrogate interest rate using the following approach. If the national average short-term interest rate in the year the debenture was issued, as represented by the interest rate on 90-day commercial paper, was greater than the national average long-term interest rate in the year the debenture was issued, as represented by the average yield on long-term corporate bonds, we used the national average short-term rate in 1987. If the national average short-term interest rate in the year the debenture was issued was less than the national average long-term interest rate in the year the debenture was issued, we used the national average long-term interest rate in the year the debenture was issued.

We added to the chosen interest rate the risk premium, which we calculated according to the methodology described above as 12 percent of the Canadian prime rate. We used the resulting interest rate as our benchmark for the debentures denominated in Canadian currency.

With respect to the debentures denominated in U.S. dollars, we followed the same general approach described above in constructing a benchmark. We used the rates on Baa corporate bonds as the highest long-term commercial rate commonly available to companies and 12 percent of the U.S. prime rate for the calculation of the risk premium. Based on this methodology, we derived a benchmark for the debentures denominated in U.S. dollars.

We compared the two benchmarks formulated above to the interest rates received on the two series of debentures issued by Sysco and found that the interest rates on Sysco's debentures were lower than the respective benchmarks. Therefore, we preliminarily determine that the guarantees provided to Sysco by the GOC and the GONS are countervailable.

To determine the benefit, we calculated the payment differential between the banchmark financing and the guaranteed debentures using our loan methodology for long-term loans which is described in the *Subsidies Appendix* and has been described in numerous previous cases (See *Final Affirmative Countervailing Duty Determination; Certain Granite Products from Spain*, 53 FR 24340, June 28, 1988). We allocated the benefit over time using as the discount rate the benchmark interest rates described above. (We were not able to base the discount rate on Sysco's weighted cost of capital for the reasons discussed above in the "Analysis of Programs" section). We then divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 1.45 percent *ad valorem* for Sysco.

2. Forgiven Wharf Loan

According to Sysco's questionnaire response, in 1974, the federal government provided Sysco with a loan to construct a loading wharf. In 1981, the federal government announced that the loan would be forgiven. In 1982, Sysco removed this loan from its long-term liabilities as shown in its financial statements.

We preliminarily determine that the benefit provided by the loan forgiveness is countervailable because it was provided to a specific enterprise. Furthermore, we preliminarily determine that the outstanding principal and accrued interest as of 1982 should be treated as a grant received in 1982 because the loan has been forgiven.

Using the declining balance methodology and the benchmark interest rate described in the previous section as the discount rate, we allocated the benefit over 20 years, which represents the average useful life of a wharf according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. We then divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy rate of 1.16 percent *ad valorem* for Sysco.

3. Regional Development Incentive Program (RDIP)

The RDIP was administered by the Department of Regional Economic Expansion (DREE) until its replacement with the Industrial Regional Development Program (IRDP) in 1983. It was established in 1969 for the purpose of creating stable employment opportunities in areas of Canada where employment and economic opportunities are chronically low, namely the Atlantic provinces. The DREE offered incenties based on a case-by-case evaluation of capital investment projects. Projects that could proceed without RDIP assistance were ineligible. Assistance was provided in the form of grants or loan guarantees.

Although the program was terminated in 1983, RDIP grants were provided to both Sysco and Algoma, prior to its termination. We preliminarily determine that the RDIP grants are countervailable because the benefits are limited to companies located within specific regions.

Sysco received four RDIP grants; Algoma received two RDIP grants. According to Algoma's questionnaire response, one of its grants was specifically tied to the production of products not under investigation. Therefore, consistent with past practice (see *OCTG*), we did not include this grant in our calculations. Algoma's other grant was approved in 1972.

To calculate a benefit we used the declining balance methodology. We used as the discount rate for Algoma the national average long-term interest rate in Canada in 1972. (We were unable to use our weighted cost of capital formula because we do not have information on the rate of return on equity in Canada in 1972). We used as the discount rate for Sysco the interest rate benchmark discussed in section I.A.1. On this basis, we calculated the benefits attributable to the review period and allocated them to the respective total sales of Algoma and Sysco. We calculated the estimated net subsidy to be 0.03 percent *ad valorem* for Algoma and 1.01 percent *ad valorem* for Sysco.

4. Certain Investment Tax Credit (ITCs)

There are a number of categories of ITCs in Canada and varying tax credit percentage levels within some of the categories. Based on our previous examination of all types of ITCs in Canada (see *OCTG* and *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada*, 51 FR 10041, March 24, 1986 (*Groundfish*)), we initiated an investigation on the following four types of ITCs: (1) tax credits of three and 13 percent, above the basic seven percent rate which we have previously found non-specific, for investment in "qualified property" located in certain regions of Canada; (2) tax credits for investment in "certified property"; (3) tax credits for large companies of 10 percent above the basic twenty percent for investment in capital equipment used for scientific research; and (4) tax credits for investment in transportation and construction equipment.

Canadian tax law provides that ITCs may be subtracted from taxes owed, but if no taxes are owed (either because a company is initially in a tax loss position or because only some of the

ITCs have been used to satisfy all tax liability), those excess ITCs earned after April 19, 1983 have a refundable, one-time cash value equal to 20 percent of the initial, face value of the ITC (40 percent for small businesses).

According to its questionnaire response, Sysco, as a provincially-owned corporation, is not liable for federal tax. During and prior to the review period, Sysco made numerous capital investments and experienced large losses. However, because the company is not liable for federal taxes, it was not eligible for a refund of taxes under the ITC law.

Algoma, in its questionnaire response, stated that it benefited from the three percent tax credit, above the basic rate of seven percent, for investment in "qualified property" because it is located in northern Ontario and that it did not use the other ITCs under investigation. Furthermore, because Algoma did not owe taxes on the tax return filed in the review period, it received a refund under the procedures described above.

We preliminarily determine that the three percent tax credit, above the basic rate of seven percent, for investment in "qualified property" is countervailable because it is limited to companies located in certain regions of Canada.

To calculate the benefit from the "qualified property" ITC, we followed our standard tax methodology. Under our tax methodology, we allocate an income tax benefit to the year in which the tax return was filed. Algoma received a refund on the tax return filed during the review period. Therefore, we consider the amount of the refund attributable to the three percent in excess of the basic rate of seven percent, to be the benefit Algoma received during the review period. We divided this benefit amount by Algoma's total sales for the review period and calculated an estimated net subsidy of 0.02 percent *ad valorem*.

B. Joint Federal-Provincial Programs

1. General Development Agreements (GDA)

GDAs provided the legal basis for various departments of the federal and provincial governments to cooperate in the establishment of economic development programs. The GDAs were umbrella agreements which stated general economic development goals. Ten-year GDAs were signed with most provinces in 1974.

Subsidiary agreements were signed pursuant to the GDAs. The subsidiary agreements were generally between particular federal and provincial government departments and addressed economic development and infrastructure needs. These agreements established various individuals types of economic development programs, delineated administrative procedures and set out the relative funding commitments of the federal and provincial governments. Subsidiary agreements were typically directed at establishing traditional government economic assistance programs, developing infrastructure, providing for economic development assistance for certain regions within the province, and providing financial assistance to specific regions, industries or enterprises.

Three such subsidiary agreements were signed between the federal government and the government of Nova Scotia. Two agreements were specifically designed to provide assistance to Sysco. The third provided for the funding of industrial development projects throughout the province.

We preliminarily determine that funds provided to Sysco under the first two agreements are countervailable in their entirety because they provided grants to a specific enterprise. With respect to the funds provided under the Industrial Development Subsidiary Agreement, we preliminarily determine that the portion of funds provided by the GONS are not countervailable because the assistance is not limited to a specific enterprise or industry or group of enterprises or industries in Nova Scotia. However, we also preliminarily determine that the portion of funds provided by the GOC are countervailable because they are limited to companies in a particular region of Canada (*i.e.*, the Province of Nova Scotia).

With respect to the Industrial Development Subsidiary Agreement, we note that although the agreement provided benefits to a wide range and number of industries, an amendment was made to the agreement, subsequent to its implementation, providing specific funds for Sysco. We will examine this amendment and whether it constitutes a discretionary governmental action which provided a benefit to a specific enterprise.

No assistance to Algoma was provided under the Canada/Ontario GDA or corresponding subsidiary agreements.

We calculated the benefit conferred by the grants using the discount rate for Sysco referred to above (see section I.A.1.), and our declining balance methodology. We divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 24.72 percent *ad valorem* for Sysco.

2. Economic and Regional Development Agreements (ERDA)

ERDAs are essentially a continuation of the GDAs. ERDAs were signed with every province and territory in the early 1980's. Similar to GDA subsidiary agreements, ERDA subsidiary agreements establish programs, delineate administrative procedures and set up the relative funding commitments of the federal and provincial governments.

Two subsidiary agreements were signed between the federal government and the province of Nova Scotia which related to Sysco. The first provided for grants to fund the modernization of Sysco's operations. The second provided for the funding of economic planning projects throughout the province.

We preliminarily determine that funds provided to Sysco under the first agreement are countervailable in their entirety because the agreement provides grants to a specific enterprise. With respect to the funds provided under the second agreement, we preliminarily determine that the portion of funds provided by the GONS are not countervailable because the assistance is not limited to a specific enterprise or industry or group of enterprises or industries in Nova Scotia. However, we also preliminarily determine that the portion of funds provided by the GOC are countervailable because they are limited to companies in a particular region of Canada (*i.e.*, the Province of Nova Scotia).

No assistance under the Canada/Ontario ERDA was provided to Algoma.

To calculate the benefit we used the same methodology described in the previous section. We calculated an estimated net subsidy of 4.86 percent *ad valorem* for Sysco.

C. Provincial Programs—Province of Nova Scotia

1. Operating Grants to Sysco

The GONS has provided Sysco with "operating grants" to cover interest on long-term debentures and other operating costs.

We preliminarily determine that these operating grants are countervailable because they provide funds to a specific enterprise. We also determine that these grants are non-recurring grants because of their exceptional nature and the uncertainty that they will continue. Furthermore, we note that these operating grants have not been provided under any particular long-standing

provincial program. Instead, it appears from the information in the questionnaire responses that the funds are provided by the GONS to Sysco according to the irregular financial needs of the company in a particular year.

To calculate the benefit, we used the same methodology described in the previous section. The estimated net subsidy is 29.61 percent *ad valorem* for Sysco.

2. Long-Term Loan Guarantees Provided to Sysco

The province of Nova Scotia guarantees all of the long-term loans made to Sysco by banks and trust companies. These guarantees were provided to a specific enterprise; therefore, we preliminarily consider that they are countervailable for the following reasons. According to the questionnaire responses, a fee would not have been charged for a commercial guarantee similar to the guarantees provided by the GONS. However, we are skeptical that a firm in the same financial position as Sysco would have been able to obtain such a guarantee. Therefore, for purposes of this preliminary determination, we analyzed the extent to which Sysco was able to obtain the long-term loans on terms more favorable than the benchmark financing.

We used as our benchmark for the long-term loans guaranteed by the GONS, the benchmark interest rate calculated in section I.A.1. pertaining to the debentures denominated in Canadian dollars guaranteed by the federal government. We compared this benchmark to the interest rates on long-term loans received by Sysco and found that the interest rates on Sysco's long-term loans were lower than the benchmark. Therefore, we preliminarily determine that the guarantees provided to Sysco by the GONS on Sysco's long-term loans are countervailable.

To determine the benefit, we calculated the payment differential between the benchmark financing and the guaranteed long-term loans using our loan methodology for long-term loans described in section I.A.1. We then divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 14.11 percent *ad valorem* for Sysco.

3. Equity infusions

The province of Nova Scotia has made several equity infusions into Sysco. These equity infusions consisted of the conversion of outstanding debt to equity, and the provision of money for redemption of loans and capital construction. As noted in the "Analysis of Programs" section above, we have preliminarily found Sysco to be unequityworthy.

We normally calculate the benefit conferred by government equity infusions inconsistent with commercial considerations by determining the difference between the national average rate of return on equity and the rate of return on equity of the company under investigation. However, Sysco's financial statements indicate that the entire amount of the GONS's equity capital has been consumed. Therefore, the calculation of any rate of return on equity for Sysco would not be a meaningful measure. Furthermore, we believe that even if we could somehow calculate a rate of return on equity for Sysco, the difference between Sysco's rate of return, presumably a negative value, and the national average rate of return would be so great that the "grant cap" would be exceeded. We therefore treated all the equity infusions received by Sysco as grants.

We calculated the benefit from the equity infusions using the grant methodology described in previous sections (see, for example, section I.B.1.). We divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 26.63 percent *ad valorem* for Sysco.

II. Programs Preliminarily Determined Not To Confer Subsidies

We preliminarily determine that the following programs do not confer subsidies:

A. Short-Term Loan Guarantees.

The GONS also guarantees all of the demand loans made to Sysco by banks. We consider these loans to be short-term loans because they are listed under current liabilities in Sysco's financial statements.

The guarantees on these demand loans were provided to a specific enterprise; therefore, we preliminarily consider that they are countervailable for the following reasons. According to the questionnaire responses, a fee would not have been charged for a commercial guarantee similar to the guarantees provided by the GONS. However, we are skeptical that a firm in the same financial position as Sysco would have been able to obtain such a guarantee. Therefore, for purposes of this preliminary determination, we analyzed the extent to which Sysco was able to issue the loans on terms more favorable than the benchmark financing.

We used as our benchmark, the interest rate on 90-day commercial paper in Canada. (According to the GOC questionnaire response, this rate represents the national average short-term interest rate in Canada). We compared this benchmark to the interest rates received on the demand loans received by Sysco and found that the interest rates on Sysco's loans were higher than the benchmark. Therefore, we preliminarily determine that the guarantees provided to Sysco by the GONS on Sysco's demand loans are not countervailable.

B. Iron Ore Freight Subsidy to Alogoma

Algoma ships sintered iron ore pellets from its mine in Wawa, Ontario to its steel mill at Sault Ste. Marie by rail on the Algoma Central Railway (ACR). The ACR also operates the Agawa Canyon Tour Train which is an important tourist attraction in Northern Ontario.

In 1986, Algoma reconsidered its use of Wawa iron ore because the delivered cost of Wawa ore was not competitive when compared to the delivered cost of ore from alternative sources. In order to make the delivered cost of Wawa ore competitive, Algoma sought a reduction in ACR's freight rates.

Algoma considered closing its Wawa mine, if ACR did not reduce the freight rate to a competitive level. Such an action would have forced ACR to cease all operations, including its tour train operation.

To preserve the continued operation of ACR, the Ontario and the Federal Governments provided grants to the ACR. The grants were made under a joint federal-provincial program established under the "Canada-Ontario Subsidiary Agreement for Tourism Development" (COTDA), which is a subsidiary agreement under ERDA. The purpose of COTDA is to stimulate the development of tourism in Ontario.

Petitioner alleges that the grants received by ACR confer a benefit to Algoma since ACR reduced the freight rate charged to Algoma after receiving the grants from the two governments. Algoma states in its questionnaire response that since it could have bought iron ore from other sources at a cost lower than mining and transporting its own ore, it did not receive a benefit from the grants received by ACR.

We preliminarily determine that the grants provided to ACR do not confer a countervailable benefit to Algoma. Algoma has provided documentations indicating it was able to purchase iron ore at a cheaper price than the cost of mining its own ore at the Wawa mines and transporting it through ACR. Thus, the grants received by ACR do not

provide a countervaliable benefit to Algoma.

III. Programs Preliminarily Determined Not to be Used

We preliminarily determine that the following programs were not used by manufacturers, producers or exporters in Canada of steel rail during the review period:

A. Federal Programs

1. Industrial and Regional Development Program (IRDP).

The IRDP was established in 1983, replacing the RDIP. The program was designed to promote indistrial development in all regions of Canada through financial support in the form of grants, loans and loan guarantees. The IRDP program terminated on June 30, 1988. According to the responses, no financial assistance under this program was provided to the respondent companies under this program.

2. Loans under the Enterprise Development Programs (EDP)

The EDP was established in 1977 and terminated in 1983. It was designed to assist individuals, companies and corporations to enhance productivity in the manufacturing and processing sectors of the Canadian economy. According to the responses, the respondent companies did not receive any assistance under this program.

3. Program for Export Market Development (PEMD) and Promotional Projects Program (PPP)

The PEMD was consolidated and restructured in 1987 and now includes the former PPP. Support provided under the new program is either industry-initiated (former PEMD) or government-initiated (former PPP). Under the industry-initiated component, interest-fee loans are provided to industries requesting assistance in export market development. Under the government-initiated component, the GOC organizes and sponsors international trade fairs and missions. According to the responses, the respondent companies did not receive assistance under this program for sales to the United States.

4. Federal Expansion and Development/ Northern Ontario (FEDNOR)

FEDNOR, established in 1987 with a five-year mandate, was designed to promote economic development in Northern Ontario. The CORE Industrial program, as part of FEDNOR, provides assistance through loan insurance and grants for various projects. According to the responses, the respondent companies did not receive assistance under this program.

5. Community-Based Industrial Adjustment Program (CIAP) Grants

CIAP was established in 1981 as part of the Industrial and Labor Adjustment Program. It was terminated in 1984. Assistance under the CIAP was provided for capital projects to commercial enterprises located in areas affected by serious industrial dislocations. According to the responses, no assistance under this program was provided to the respondent companies.

6. Export Credit Financing

The Export Development Council (EDC) was created to facilitate Canada's export trade within the framework of the Canadian Export Development Act. The EDC, a self-sustaining Crown Corporation, insures and finances Canadian export sales. According to the responses, EDC did not finance or insure the sale of steel rail to the United States during the review period.

7. Defense Industry Productivity Program

The DIPP, administered by the Department of Regional and Industrial Expansion (DRIE) has several purposes. Among these purposes is the stimulation of exports of military hardware and the provision of assistance to upgrade equipment processes and facilities to make companies more competitive in bidding for military hardware contracts.

Algoma applied for DIPP grants for the installation of hot metal desulphurization facilities. DIPP funds were paid to Algoma in 1980 and 1981. We examined these grants in *OCTG*. Although the Department may determine that DIPP grants serve as export subsidies in other cases, we determined in *OCTG* that there were no conditions in the Algoma DIPP grant which were tied to export performance or which made the grant contingent on exports. Algoma has a large home market for desulfurized steel and products made from desulfurized steel. This DIPP grant benefits Algoma's entire production, and not exports alone. Thus, we preliminarily determine that this grant was not an export subsidy.

Although we have preliminarily determined that this program is not an export subsidy, we must still determine whether any benefits were received during the review period and if so whether this program is limited to a specific enterprise or industry or group of enterprises or industries. Consistent with the *Subsidies Appendix*, we divide the sum of all grants received in each year by the total sales of the company in the same year. Algoma received no other grants in 1980 and 1981. The calculated benefits in *OCTG* were *de minimis*;, i.e., less than 0.50 percent. Therefore, as in *OCTG*, we expensed them in the year of receipt. Because the DIPP grants received by Algoma were expensed prior to the review period and because no DIPP grants were received by Algoma during the review period, we preliminarily determine that Algoma did not use this program. According to its questionnaire response, Sysco did not receive any grants under this program.

B. Joint Federal-Provincial Programs

Mineral Development Agreement (MDA) Benefits to Algoma

The MDA agreement is a subsidiary agreement pursuant to the Economic Regional Development Agreement between Canada and the Province of Ontario effective November 2, 1984. The MDA Subsidiary Agreement was implemented on June 17, 1985 with a five-year mandate. Its purpose is to aid and encourage Ontario's mineral industry. According to the responses, Algoma has not received assistance under the MDA subsidiary agreement.

C. Provincial Programs

1. Ontario Development Corporation (ODC) Export Support Loans, Other Loans and Loan Guarantees

This program was established to assist in the development and diversification of industries in Ontario. According to the responses, Algoma and Sysco have not received assistance under this program.

2. Provision of Electricity by Ontario Hydro to Algoma

Petitioner alleged that the government-owned power company in Ontario, Ontario Hydro, provides incentive rates for large industrial customers in off-peak hours. According to the response, Algoma did not purchase electricity from Ontario Hydro.

3. Income Tax Exemption for Sysco

As a crown corporation owned by the GONS, Sysco is exempt from the payment of federal taxes. According to Sysco's financial statements, the company has incurred losses throughout the 1980s. As a result, Sysco would have incurred no federal income tax liability before or during the review period. Therefore, Sysco did not benefit from its tax exemption during the review period.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of steel rail from Canada which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for all entries of this merchandise, except entries by Algoma, equal to 103.55 percent *ad valorem*. Algoma is excluded from this preliminary determination. This suspension will remain in effect until further notice.

Entries of the subject merchandise by all non-producer exporters, except Bernard Railtrack Export Inc., will not be subject to suspension of liquidation and a cash deposit or bond equal to the estimated net subsidy if it can be demonstrated to the U.S. Customs Service that the entries of the subject merchandise were produced by and purchased from Algoma. Entries made by Bernard Railtrack Export Inc. will be subject to suspension of liquidation and a cash deposit or bond equal to the estimated net subsidy shown of 103.55 percent *ad valorem*.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination 45 days after the Department makes its final determination.

Public Comment

In accordance with § 355.38 of the Commerce Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.38), we will hold a public hearing, if requested, on April 21, 1989 at 10:00 a.m. in room 3708, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in a hearing must submit a request within 10 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the arguments to be raised at the hearing. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of case briefs must be submitted to the Assistant Secretary no later than April 14, 1989. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than April 19, 1989. An interested party may make an affirmative presentation at the public hearing only on arguments included in that party's case brief, and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Written argument should be submitted in accordance with § 355.38 of the Commerce Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.38), and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89–4899 Filed 3–1–89; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevent to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–00004." A summary of the application follows.

Applicant: KIAD International Trading Company, Inc., 7501 Chesterfield Place, Suite 1424, Dallas, Texas 75237.

Contact: Vuna Adams, II, Chief Executive Officer

Telephone: (214) 780–9818

Application No.: 89–00004.

Dated Deemed Submitted: February 15, 1989.

Members (in addition to applicant): None.

Summary of the Application

Export Trade

Products

All products.

Export Trade Facilitation Services (as they relate to the export of Products)

All trade-facilitating services in connection with the export of Products, including matching buyer with seller; furnishing financing; placement of marine, casualty, and war risk insurance; coordinating the shipment of

Products; processing documentation; establishing repayment mechanisms; providing ancillary procurement services; market analysis and research; countertrade services; and consulting.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

KIAD International seeks certification to:

1. Enter into any number of non-exclusive agreements with individual buyers in the Export Markets or with individual suppliers to act as a sales representative or broker for the export of Products and the provision of Export Trade Facilitation Services.

2. Enter into agreements with individual suppliers for the export of Products and the provision of Export Trade Facilitation Services wherein:

(a) KIAD establishes prices for Products in Export Markets; and/or

(b) KIAD agrees to serve as the exclusive sales representative. "Exclusive" means that KIAD may agree not to represent any competitors of the supplier unless authorized by the supplier; and/or the supplier may agree not to sell, directly or indirectly through any other intermediary, into the Export Markets in which KIAD represents the supplier.

3. Enter into exclusive agreements with persons in the Export Markets (including distributors and sales or marketing agents), wherein KIAD agrees to pay a competitive commission or other compensation. "Exclusive" means:

(a) KIAD may agree to deal in Products in the Export Markets only through that person, and/or

(b) that person agrees not to represent in Export Markets, or purchase Products from, anyone other than KIAD.

4. Establish price, quantity, territorial, and customer restrictions for Products to be sold in the Export Markets for KIAD's own account or on behalf of an individual supplier.

5. Enter into exclusive or non-exclusive agreements with individual buyers to provide Export Trade Facilitation Services and to act as a purchasing agent with respect to a particular transaction involving the export of Products.

6. Upon receiving a request from a buyer in the Export Markets for the price of a particular Product, KIAD may ask one or more U.S. suppliers individually to supply a price quotation to KIAD for that Product, add its own markup to the supplier's price, and transmit a price quotation to the buyer. Upon placement of an order by a buyer, KIAD may purchase Products and ship to the buyer.

7. As KIAD becomes aware of invitations to bid or other sales opportunities in the Export Markets, KIAD may:

(a) Contact individual suppliers of the Products specified in the invitation to bid or the purchase specifications;

(b) Invite the suppliers to provide independent quotations to KIAD for the export of the Products (provided that KIAD does not reveal to any supplier the quotation of any other Supplier), and

(c) Enter into independent, individual agreements with suppliers whereby KIAD will submit a response to the bid invitation or the purchase specifications.

Dated: February 24, 1989.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-4791 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Review on Certain Semi-Finished Steel Slabs; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Australia, U.S.-Brazil, U.S.-EC, and U.S.-Korea Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain semi-finished steel slabs.

DATE: Comments must be submitted no later than March 13, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Australia, U.S.-Brazil, U.S.-EC, and U.S.-Korea Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for various grades of semi-finished steel slabs for use in producing hot-rolled sheet and strip, cold-rolled sheet, galvanized sheet, and electric-resistance/welded pipe. The slabs are in thicknesses ranging from 7.00 inches through 8.81 inches, widths ranging from 28 inches through 61 inches, and lengths ranging from 212 inches through 260 inches.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 13, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

February 23, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-4790 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant Exclusive Patent License to Catalyst Corporation; Correction

Notice document 89–3118 appearing on page 6315 in the issue of Thursday, February 9, 1989 should be disregarded since it duplicates notice document 89–2913 appearing on page 5998 in the issue of Tuesday, February 7, 1989. Therefore, the 60 day notice period will run from the February 7, 1989 date.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–4858 Filed 3–1–89; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplements, Part 252, Solicitation Provisions and Contract Clause; No Forms; and OMB Control Number 0704–0256.

Type of Request: Extension of currently approved collection.

Average Burden Hours/Minutes Per Response: .25 Hours.

Frequency of Response: Required only when a company offers surplus material.

Number of Respondents: 50.

Annual Burden Hours: 1,000.

Annual Responses: 4,000.

Needs and Uses: This request concerns information collection and recordkeeping requirements related to the purchase of surplus material.

Affected Public: Businesses or other for-profit.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written requests for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 27, 1989.

[FR Doc. 89–4926 Filed 3–1–89; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Intelligence Agency Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been relocated as follows:

DATE: Tuesday, 28 February 1989.

ADDRESS: NSA, Fort George G. Meade, MD.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328 (202 373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 27, 1989.

[FR Doc. 89–4925 Filed 3–1–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 10 April 1989.

Place of Meeting: Washington, DC.

Start Time of Meeting: 9:00 a.m.

Proposed Agenda: Election of officers; selection of Executive Committee; scheduling of meetings for remainder of year; and identification of areas of interest for 1989.

All proceedings are open. For further information, contact Lieutenant Colonel Michael J. Shestok, United States Military Academy, West Point, NY 10996–5000, (914) 938–3301.

For the Chairman of the Board of Visitors.

Michael J. Shestok,

LTC, GS, Executive Secretary, USMA Board of Visitors.

[FR Doc. 89–4808 Filed 3–1–89; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Intent To Waive Certain Requirements; Federal States of Micronesia

AGENCY: Department of Education.

ACTION: Notice of intent.

SUMMARY: Notice is given that, under section 8003(a) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, the Secretary intends to waive certain requirements under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) and under Chapter 1 of Title I of the ESEA for the Office of Education (OE) of the Federated States of Micronesia (FSM) (formerly part of the Trust Territory of the Pacific Islands). This notice sets forth the terms and conditions under which the Secretary intends to grant the waiver, and invites public comments.

DATE: Comments must be received on or before April 3, 1989.

ADDRESS: All written comments concerning this notice should be addressed to Mr. Benjamin Rice, Chief, Grants, Administration, and Support Branch, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, FOB–6), Washington, DC 20202–6132.

FOR FURTHER INFORMATION CONTACT: Mr. Benjamin Rice. Telephone: (202) 732–4692.

SUPPLEMENTARY INFORMATION:

A. Background

Title V of the Omnibus Territories Act, 48 U.S.C. 1469a, authorizes the Secretary to consolidate Federal education programs for which an Insular Area is eligible to apply. Programs that the Secretary has consolidated include,

for example, Chapter 1 and Chapter 2 of the ECIA and Chapter 1 and Chapter 2 of Title I of the ESEA, as amended (which supersede Chapters 1 and 2 of the ECIA). From the list of consolidated programs, an Insular Area may apply annually for a consolidated grant for two or more of those programs. The Insular Area may then use its consolidated grant funds to carry out one or more of the programs included in its consolidated grant application. The Insular Area must comply with the statutory and regulatory requirements that apply to each program under which it expends its consolidated grant funds. Since the Compact of Free Association was signed, the OE of the FSM has applied to receive consolidated grant funds, including funds for the 1988–89 school year.

B. Authority for Granting a Waiver

Under section 8003(a) of the ESEA, 20 U.S.C. 3383(a), the Secretary is authorized to waive, upon request, any requirements of the ESEA or the ECIA for an Insular Area if the Secretary determines that compliance with those requirements is "impractical or inappropriate because of conditions or circumstances particular to any of such jurisdictions * * *." Any waiver under section 8003(a) is subject to the terms and conditions that the Secretary deems necessary to carry out the purposes of the program whose requirements are being waived.

C. Waiver Request

The OE has indicated in its consolidated grant application that it intends to spend a portion of its consolidated grant funds on activities under Chapter 1 of the ECIA. Accordingly, the OE has requested the Secretary to waive the applicability of four Chapter 1 requirements because those requirements are impractical or inappropriate due to conditions or circumstances particular to the FSM. First, the OE has requested a waiver of section 556(b)(2) of the ECIA, 20 U.S.C. 3805(b)(2), which requires an annual assessment of educational needs and inclusion in the Chapter 1 program of those children who have the greatest need for special assistance. Essentially, this same requirement is also contained in section 1014(b) of the ESEA, 20 U.S.C. 2724(b). According to the OE, 90 percent of the elementary and secondary school children in the FSM are educationally deprived and eligible for Chapter 1 services. As a result, selecting children who are in greatest need when all children have great needs is inappropriate. In addition, the requirement to perform an annual needs assessment is impractical. According to the OE, there is no instrument available to assess the educational needs of all children. Moreover, if an instrument were available, there would be no way to collect the data, assemble it, and communicate the results back to the operating schools in time to be used due to the great distances between the islands of the FSM.

Second, the OE has requested a waiver of section 556(e) of the ECIA, 20 U.S.C. 3805(e), which requires, in part, a local educational agency to convene an annual public meeting, to which all parents of eligible students must be invited, to explain to parents the programs and activities provided with Chapter 1 funds. This requirement is also contained in section 1016(c)(2) of the ESEA, 20 U.S.C. 2726(c)(2). According to the OE, it is too costly to bring all parents together for a meeting or to charter ships to go to the outer islands to meet with parents. In addition, there are several languages spoken by the parents, which would require that expensive interpreters be hired for translations. Per diem costs for persons to travel among the islands to attend parent meetings would also be prohibitive. Furthermore, there is no space available on many of the islands to hold such meetings.

Third, the OE has requested a waiver of section 557 of the ECIA, 20 U.S.C. 3806, which requires that eligible students in private schools receive equitable Chapter 1 services. This requirement is also contained in section 1017 of the ESEA, 20 U.S.C. 2727. In *Aguilar* v. *Felton*, the United States Supreme Court held that it was unconstitutional for public school personnel to provide Chapter 1 instructional services to private school children on the premises of religiously affiliated private schools. As a result, Chapter 1 benefits must be provided through instructional services at a neutral site or by certain other means. In the FSM, however, neutral facilities are not available near the private schools to provide Chapter 1 services; public school sites are already overcrowded; and educational radio, television, mobile vans, and computer-assisted instruction are impractical or unavailable. Instead, under its consolidated grant application, the OE would use the funds it would be required to expend on services for eligible private school children under Chapter 1 to provide additional services for those children under Chapter 2.

Finally, the OE has requested a waiver of section 558(c), 20 U.S.C. 3807(c), which requires, in part, that a school district in which all school attendance areas are project areas provide services with State and local funds that are substantially comparable in each area. Comparability is determined by factors such as a districtwide salary schedule, pupil/staff ratios, and expenditures/pupil ratios. This requirement is also contained in section 1018(c) of the ESEA, 20 U.S.C. 2728(c). According to the OE, there are conditions and circumstances in the FSM that make compliance with the requirement impractical. For instance, the local educational agencies do not have sufficient local funds to add personnel to the noncomparable schools to achieve comparability and the tax base is insufficient to generate additional funds. Moreover, the FSM cannot reassign students to other schools, often hundreds of miles away from their homes, to meet comparability requirements. Such reassignment would require setting up boarding schools for very young children that would be neither practical, economical, or socially desirable. In addition, school facilities may not be able to accommodate the additional students that would have to be transferred. For similar reasons, it would be impractical and costly to reassign instructional personnel to schools other than those in their home communities.

D. Management Plan

Section 8003(a)(2) of the ESEA provides that any waiver is subject to the terms and conditions that the Secretary deems necessary, including submission of a plan for management of the funds in a manner designed to achieve the purposes of the program whose requirements are being waived. The Secretary has determined that the descriptions in the OE's consolidated grant applications of the Chapter 1 activities the OE plans to conduct are sufficient for purposes of section 8003(a)(2). Under the application for 1988–89, for example, the OE plans to expend approximately $2.6 million for Chapter 1 activities. Of that amount, approximately $11,000 would be used for construction of school facilities for the FSM's educationally deprived school population, and $1.4 million would be used for teachers, aides, and supplies to provide basic skills. The OE also plans, in accordance with its waiver request, to use the consolidated grant funds it would be required to expend on services for eligible private school children under Chapter 1 to provide additional services to those children under Chapter 2.

E. Notice of the Secretary's Intent to Grant a Waiver

Section 8003(a)(1) of the ESEA requires that, at least 30 days before approving a request for a waiver, the Secretary must publish in the Federal Register a notice of his intent to do so and the terms and conditions under which the waiver will be granted. In accordance with this requirement, notice is hereby given that, subject to the terms and conditions described below, the Secretary intends to waive the applicability to the OE of the requirements in sections 556(b)(2), 556(e), 557, and 558(c) of the ECIA and the comparable requirements in sections 1014(b), 1016(c)(2), 1017, and 1018(c) of the ESEA.

F. Terms and Conditions Under Which a Waiver Would be Granted

Under section 8003(a)(2), the OE agrees to comply with the following terms and conditions:

(1) All consolidated grant funds that are expended for Chapter 1 activities by the OE during the period covered by the waiver will be spent in accordance with—

(a) All applicable statutory and regulatory requirements, except those Chapter 1 requirements that are specifically identified in the waiver.

(b) The Chapter 1 activities described in the OE's annual consolidated grant application or amendments to the application;

(c) The budget contained in the OE's annual consolidated grant application; and

(d) These terms and conditions.

(2) Consolidated grant funds that the OE would be required to expend on Chapter 1 services for students in private schools will be used to provide additional services for those students under Chapter 2.

(3) The waiver remains in effect until the OE is able to comply with the waived requirements and/or until the OE ceases to operate Chapter 1 activities; and

(4) If the conditions or circumstances that justified the waiver change, the OE will notify the Department and the terms of the waiver will be adjusted accordingly.

Dated: February 27, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children-Local Educational Agencies.)

[FR Doc. 89-4938 Filed 3-1-89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.031A, CFDA No. 84.031G]

Applications Under the Strengthening Institutions Program and the Endowment Challenge Grant Program; Extension of Closing Date

AGENCY: Department of Education.

ACTION: Extension of closing date for transmittal of applications for eligibility under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

The Secretary extends to April 17, 1989, the closing date by which an institution may submit an application for eligibility under the Strengthening Institutions Program and the Endowment Challenge Grant Program. The previous closing date of January 27, 1989, has been extended because the Secretary has identified a problem related to the mail delivery system.

On December 19, 1988, the Secretary published a Notice establishing the closing date for transmittal of eligibility applications for fiscal year 1989 under the Strengthening Institutions Program and the Endowment Challenge Grant Program (53 FR 50989). The purpose of this notice is to extend the closing date for transmittal of applications.

FOR FURTHER INFORMATION CONTACT: For further information, contact Dr. Caroline J. Gillin, Director of Institutional Development, U.S. Department of Education, Room 3042, Regional Office Building 3, 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 732-3314.

(20 U.S.C. 1057 and 1065a)

Dated: February 23, 1989.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89-4937 Filed 3-1-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intention To Award Grant to Princeton University

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for award under Grant Number DE-FG01-89CE21032 to Princeton University.

Scope: The funding for this grant will support research in the area of airflow measurements in buildings and will allow Princeton University to improve airflow measurement techniques.

The purpose of this project is to provide further understanding of airflow in various types of buildings, and improve efforts to transfer the airflow measurement technology to the private sector.

Eligibility: Eligibility for this award is being limited to Princeton University, because of its high qualifications in the field of airflow measurements in buildings and because the proposed work would be a follow-on to the Office of Buildings and Community Systems supported activities that are necessary for the satisfactory completion of a project presently being funded by DOE.

This project is a research program in Indoor Air Quality, Infiltration and Ventilation. Competition for support would have a significant adverse effect on continuity or completion of this project. This adverse effect would be the loss of opportunity to use the exclusive capabilities available to Princeton at this time. Princeton University's Center for Energy and Environmental Studies has made major contributions to the energy research community's understanding of airflow characteristics in buildings. In addition, Princeton is uniquely suited to carry out the proposed tasks because of the measurement capabilities already developed on site at Princeton.

The term of this grant shall be nine months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89-4931 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award a Grant to the Underground Injection Practices Council

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant under Bartlesville Project Office procurement request number 19-89BC14331.000 to the Underground Injection Practices Council (UIPC) for an effort entitled, "Study of Oil and Gas Industry Subsurface Water Injection Operations in the Williston Basin".

Scope: The purpose of the grant project is to define the data

requirements and develop the procedures needed to formulate a risk-based regulatory program for consideration by the State and Federal Agencies responsible for administering underground injection control (UIC) programs. The objective will be accomplished by conducting a detailed study of subsurface water injection operations in the Williston Basin. The benefits to be derived include the following:

(1) Develop information which may foster the establishment of more reasonable regulatory requirements applicable to oil and gas subsurface water injection wells.

(2) Obtain data useful in DOE's Tertiary Oil Recovery Information System.

(3) Support efforts established to evaluate federal regulation and guidelines applicable to oil and gas injection wells.

In accordance with 10 CFR 600.7(b)(2)(i)(B), the UIPC has been selected as the grant recipient. This activity is being or would be conducted by the applicant using its own resources or those of a third party; however, DOE support of this activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning on conducting such an activity.

The term of the grant is for seven months with a total estimated value of $100,000.00 and DOE sharing 33% and the recipient sharing 67% of this amount.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: David N. Barnett, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, telephone (412) 892-5912.

Date: February 23, 1989.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division (Acting).

[FR Doc. 89-4932 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[ERA Docket No. 89-02-NG]

Cornerstone Natural Gas Co.; Application To Import Natural Gas From and Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from and export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 19, 1989, of an application filed by Cornerstone Natural Gas Company (Cornerstone) for blanket authorization to import up to 100 Bcf of natural gas from Canada and Mexico and to export up to 100 Bcf of natural gas to Canada and Mexico. The application requests that the authorization be approved for a two-year term beginning on the date of the first delivery. Cornerstone intends to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates it would submit quarterly reports detailing each transaction.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than April 3, 1989.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586-9622.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Cornerstone, a Delaware corporation, with its principal place of business in Dallas, Texas, proposes to import or export natual gas either for its own account or as agent on behalf of both suppliers and purchasers, including local distribution companies, pipelines, municipalities, and end users. According to the application, the authority requested by Cornerstone contemplates the following types of import and export transactions: (1) Importation of supplies of Canadian and Mexican natural gas for consumption in U.S. markets; (2) importation of Canadian natural gas for eventual return (via export) to Canadian markets; (3) exportation of domestically produced natural gas for consumption in Canadian and Mexican markets; and (4) exportation of domestically produced gas for eventual return (via import) to U.S. markets.

According to Cornerstone, the specific terms of each transaction would be negotiated on an individual basis, including price and volumes, to reflect market conditions.

Cornerstone requests that an authorization be granted on an expedited basis. A decision on Cornerstone's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natual gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commerical parties to freely negotiate their own trade arrangements. Parties, expecially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket import/export application is granted, the authorization may permit the import or export of the gas at any point of entry or exit on the international boundary where existing pipeline facilities are located.

NEPA Compliance

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the department's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless comments are received indicating the presumption does not or

should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., April 3, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Cornerstone's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 24, 1989.

J. E. Walsh, Jr.,

Acting Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 89-4929 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket Nos. 88-19-NG, 88-39-NG, & 88-63-NG]

Hydro Engineering, Inc., et al; NEPA Compliance For Applications To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Supplemental notice regarding NEPA compliance for applications for authorization to import natural gas for cogeneration facilities.

SUMMARY: The Department of Energy (DOE) previously noticed in the Federal Register three publications to import natural gas from Canada to be used to fuel cogeneration facilities. They are: Hydro Engineering, Inc., ERA Docket No. 88-19-NG (53 FR 25203, July 5, 1988); Midland Cogeneration Venture Limited Partnership, ERA Docket No. 88-39-NG (53 FR 34811, September 8, 1988); and, Vector Energy (U.S.A.) Inc., ERA Docket No. 88-63-NG (53 FR 47857, November 28, 1988). This notice supplements those notices with respect to DOE's compliance with the National Environmental Policy Act of 1969 (NEPA).

The DOE has concluded that compliance with the NEPA for the proposed actions to grant or deny these import applications can be achieved by invoking two categorical exclusions in the DOE NEPA Guidelines (52 FR 47662, December 15, 1987). Comments on this procedure may be submitted by any interested person no later than March 17, 1989.

FOR FURTHER INFORMATION CONTACT:
William L. Durbin, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9516.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

Carol Borgstrom, Director, Office of NEPA Project Assistance, EH-25, U.S. Department of Energy, Forrestal Building, Room 3E-080, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

SUPPLEMENTARY INFORMATION: On August 9, 1988, the DOE published in the Federal Register (53 FR 29934) a notice of proposed changes to Section D of its NEPA Guidelines by adding to the list of categorical exclusions in Section D, the approval or disapproval of an import/export authorization for natural gas under section 3 of the Natural Gas Act, in cases not involving new construction. A categorical exclusion is a class of DOE action which normally does not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). In addition, the DOE proposed to change the classification in Sectioin D of approval or disapproval of an import/export authorization involving minor new construction from the type of actions normally requiring preparation of an EIS to the type of actions normally requiring preparation of an EA, but not necessarily an EIS. As indicated in the August 9 Federal Register notice, the DOE is applying the proposed changes pending a final decision on their adoption.

Under these changes, actions that grant or deny import authorizations where no new pipeline is needed but where new ancillary facilities, such as a cogeneration facility, are to be constructed would normally require the preparation of an EA, because they involved "minor new construction." However, for the reasons stated below, we believe that preparation of an EA for these actions is unnecessary due to the joint application of two other categorical exclusions contained in the DOE NEPA guidelines.

The environmental impacts of constructing and operating new cogeneration facilities have been addressed on numerous occasions by the Economic Regulatory Administration (ERA) in conjunction with processing exemption petitions under the Powerplant and Industrial Fuel Use Act (FUA) (10 U.S.C. 3801 *et seq*, as

amended), and as a result, such actions have been granted a categorical exclusion from further NEPA review (52 FR 47670, December 15, 1987). The cogeneration facilities to be constructed in connection with these import applications are identical to those facilities covered by the categorical exclusion for FUA actions. Therefore, it is an appropriate application of another categorical exclusion contained in the DOE guidelines for "actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid" (52 FR 47668, December 15, 1987) to extend the FUA categorical exclusion for cogeneration facilities to the grant of an authorization to import natural gas under the NGA which results in the construction and operation of a cogeneration facility.

A categorical exclusion raises a rebuttable presumption that the Federal action will not significantly affect the quality of the human environment. Unless it appears during the proceedings on these import applications that the grant or denial of authorization will significantly affect the quality of the human environment, the Office of Fuels Programs expects that no additional environmental review will be required.

A copy of each application is available for inspection and copying in the Office of Fuels Programs Docket Room, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Ave., SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 24, 1989.

J. E. Walsh, Jr.,

Acting Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 89-4927 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 89-03-NG]

Washington Natural Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Office Of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on January 19, 1989, of an application filed by Washington Natural Gas Company (Washington Natural) for blanket authorization to import up to 50 Bcf of natural gas from Canada over a two-year term beginning on the date of first delivery.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than April 3, 1989.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586-6162.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Washington Natural, a Washington State corporation, is a natural gas distribution company serving residential, commercial and industrial customers in 59 cities, towns, and adjacent unincorporated areas within its five-county service area in the State of Washington. Washington Natural purchases a firm supply of natural gas for its distribution operations from Northwest Pipeline Corporation (Northwest). Washington Natural also receives firm and interruptible transportation services from Northwest.

Washington Natural proposes to purchase the imported gas from a variety of Canadian suppliers on an interruptible basis at competitive prices for its system supply. Washington Natural states that the terms of each sales transaction, including price and volume, would be freely negotiated, thus ensuring that the imports will reflect market conditions. The proposed imports will be accomplished using existing pipeline capacity and no new construction will be involved. Washington Natural also states that it would file reports within 30 days of the end of each calendar quarter giving details of individual transactions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts this import arrangement will be competitive and this in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this request is granted, the import of gas from Canada may be permitted at any existing import point and through any existing transmission system.

NEPA Compliance

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 5321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the department's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusions in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless comments are received indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene,

notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.s.t., April 3, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Washington Natural's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 24, 1989.

J. E. Walsh, Jr.,

Acting Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 89–4928 Filed 3–1–89; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee

Date and Time: Thursday, April 6, 1989, 1:30 p.m.—5:00 p.m. Friday, April 7, 1989, 9:00 a.m.—3:00 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–72, Washington, DC 20585, Telephone: (202) 586–2088.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda:

Thursday, April 6, 1989

A. Opening Remarks

B. Major Topics:

1. Capturing Non-Utility Generation of Electricity
2. Uncertainty Analysis in Forecasting
3. New Confidentiality Legislation (Public Comments)

Friday, April 7, 1989

4. Analysis of Nuclear Capacity Factor Increase
5. Statistical Packages for the PC
6. PC Supply Models: The New Generation
7. Information Resource Management
8. Expert Systems (Public Comments)

C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Ms. Carole Patton at 202–586–2222.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E–190), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on February 27, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–4933 Filed 3–1–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–232–000 et al.]

Detroit Edison Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 24, 1989.

Take notice that the following filings have been made with the Commission:

1. Detroit Edison Company

[Docket No. ER89–232–000]

Take notice that Detroit Edison Company (Detroit Edison) on February 14, 1989, tendered for filing a letter agreement dated January 9, 1989, between Detroit Edison and General Public Utilities which constitutes a redetermination of the fixed charge rate applicable to transactions under Amendment No. 6 among Consumers Power Company, the Detroit Edison Company, and the Toledo Edison Company, dated June 1, 1982, for the sale of Specific Capacity Power to General Public Utilities. This Amendment has been denoted as the Detroit Edison Company Rate Schedule FERC No. 11. Detroit Edison states that the redetermination of the fixed charge rate was made pursuant to the terms of Amendment No. 6.

Detroit Edison states that the letter agreement establishes the fixed charge rate at 13.545% for service rendered on and after January 1, 1989, and is subject to redetermination during the term of Amendment No. 6 in accordance with § 7.12. Detroit Edison stated the redetermination reflects the reduction of its Michigan Public Service Commission authorized return on common equity from 14.5% to 13.0% the effect being a reduction of 2.325% in the fixed charge rate from that used in the initial agreement. This determination will decrease the monthly demand charge to $412,532 in accordance with §§ 7.11 and 7.12 of Service Schedule G.

Detroit Edison states that copies of the filing were served upon Consumers Power Company, the Cleveland Electric Illuminating Company (Centerior Energy), General Public Utilities Corporation, the Toledo Edison Company, and the Michigan Public Service Commission.

Comment date: March 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket No. ER89-233-000]

February 24, 1989.

Take notice that New England Power Company (NEP) on February 16, 1989, tendered for an initial rate schedule a Letter Agreement between NEP and Boston Edison Company (BECO) that provides for the sale by NEP of twenty-five megawatts of capacity and related energy from NEP's purchase from Public Service Electric and Gas Company for the period January 1, 1989 through January 31, 1989.

NEP requests that the notice requirements be waived and that the agreement be permitted to become effective on January 1, 1989.

Comment date: March 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Power Service Corporation

[Docket No. ER89-158-000]

Take notice that on February 7, 1989, Allegheny Power Service Corporation (APS) tendered for filing additional information, at the Commission's request, concerning various modifications of the APS Interconnection Agreement with Baltimore Gas and Electric Company.

Comment date: March 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4902 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-842-000 et al.]

Northwest Pipeline Corporation et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP89-842-000]

February 23, 1989.

Take notice that on February 17, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-842-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Williams Gas Marketing Company (Williams), under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 15,000 MMBtu of natural gas per day for Williams, a marketer of natural gas, from receipt points located in Carbon, Fremont and Sweetwater Counties, Wyoming, Daggett County, Utah and Moffat County, Colorado to delivery points also located in Wyoming, Utah and Colorado. Northwest anticipates transporting, on an average day, 260 MMBtu and an annual volume of 95,000 MMBtu.

Northwest states that the transportation of natural gas for Williams commenced December 2, 1988, as reported in Docket No. ST89-2160-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

Comment date: April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP89-844-000]

February 23, 1989.

Take notice that on February 17, 1989, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108, filed in Docket No. CP89-844-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Normandy Oil & Gas Company, Inc. (Normandy), a producer of natural gas, under its blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that pursuant to an agreement dated September 22, 1988, as amended November 22, 1988, under Rate Schedule TI-1, it would transport up to 1,500 MMBtu per day of natural gas for Normandy for a term continuing on a month-to-month basis, subject to termination upon 30 business days' written notice by either party. Northwest further states that it would transport the natural gas from wells located in La Plata County, Colorado to El Paso Natural Gas Company at the Alkali Gulch delivery point located in La Plata County, Colorado. Northwest indicates that no construction of new facilities would be required to provide the proposed transportation service.

Northwest indicates that the maximum day, average day and annual transportation volumes would be approximately 1,500 MMBtu, 150 MMBtu and 50,000 MMBtu, respectively.

Northwest states that it commenced the transportation of natural gas for Normandy on December 16, 1988, at Docket No. ST89-2093-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP89-827-000]

February 23, 1989.

Take notice that on February 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-827-000 a request pursuant to §§ 157.205(b) and 284.223 of the Regulations under the Natural Gas Act for authorization to provide a transportation service for Amgas, Inc. (Amgas), under the certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas for Amgas from various receipt points located in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois and redeliver subject gas, less fuel used and line loss gas, to Central Illinois Light Company in Tazewell County, Illinois. Panhandle further states that the maximum daily and annual quantities that it would transport for Amgas would be 500 dekatherms and 182,500 dekatherms, respectively.

Panhandle indicates that in a filing made with the Commission in Docket ST89–1927, it reported that transportation service for Amgas commenced on January 1, 1989 under the 120-day automatic authorization provisions of Section 284.233(a).

Comment date: April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–861–000]

February 23, 1989.

Take notice that on February 21, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–861–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Taylor Energy Company (Taylor), indicated to be a producer, under the blanket certificate issued in Docket No. CP88–328–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a transportation agreement dated January 5, 1989, under its Rate Schedule IT, it proposes to transport up to 9.500 dt per day equivalent of natural gas for Taylor. Transco states that it would transport the gas from an existing receipt point at Matagorda Island Block 619, offshore Texas, and deliver the gas at an existing point of interconnection between Transco and Natural Gas Pipeline Company of America at Wharton County, Texas.

Transco advises that service under Section 284.223(a) commenced January 28, 1989, as reported in Docket No. ST89–2187. Transco further advises that it would transport 5,700 dt on an average day and 2,080,500 dt annually.

Comment date: April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–807–000]

February 23, 1989.

Take notice that on February 10, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas, filed in Docket No. CP89–807–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Shell Gas Trading Company (Shell Gas), under Transco's blanket certificate issued in Docket No. CP88–328–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco requests authorization to transport, on an interruptible basis, up to a maximum of 1,450,000 dekatherms (dt) of natural gas per day for Shell Gas from receipt points located in Louisiana, offshore Louisiana, Mississippi, Texas and offshore Texas to delivery points located in Louisiana, offshore Louisiana, Mississippi, Texas and offshore Texas. Transco anticipates transporting, on an average day 750,000 dt and an annual volume of 273,750,000 dt.

Transco advises that the transportation of natural gas for Shell Gas commenced January 1, 1989, as reported in Docket No. ST89–1925–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Transco in Docket No. CP88–328–000.

Comment date: April 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

6. Texas Gas Transmission Corporation

[Docket No. CP89–828–000]

February 23, 1989.

Take notice that on February 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–828–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for General Motors Corporation (GM), under its blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Pursuant to a gas transportation agreement executed on November 15, 1988, Texas Gas requests authorization to transport up to 10,000 MMBtu of natural gas per day for GM from various exiting points of receipt located along its system to a single point of delivery located in Warren County, Ohio. Texas Gas states that the service would be provided on a month-to-month basis and could be terminated upon thirty (30) days written notice by either party. The average day and annual transportation quantities are expected to be 5,360 MMBtu and 1,956,575 MMBtu, respectively. Texas Gas advises that it began transporting gas for FM on January 1, 1989, are reported in Docket No. ST89–1717–000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line

[Docket No. CP89–817–000]

February 24, 1989.

Take notice that on February 14, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP89–817–000 an application pursuant to section 7(b) of the Natural Gas Act requesting an order permitting and approving partial abandonment of sales service to Indiana Gas Company, Inc. (Indiana Gas), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that, pursuant to § 284.10 of the Commission's Regulations, Panhandle and Indiana Gas have entered into a Sales Agreement dated January 1, 1989, which provides for a 15% reduction of its sales contract demand (CD) level which was converted to firm transportation service effective on January 1, 1989. Thus, Panhandle seeks authority for partial abandonment of Indiana Gas' daily sales contract quantity. Panhandle further states that it will provide the resulting firm transportation service in accordance with the terms and conditions of Panhandle's Rate Schedule PT–Firm, as such may be amended from time to time, or a successor tariff.

Specifically, Panhandle states that it seeks authority for partial abandonment of Indiana Gas' current sales CD, to be effective January 1, 1989, by the daily amount in Column No. 2, as shown below:

Month	Current CD Mcf/d	Reduction Mcf/d	Resulting CD Mcf/d
	(1)	(2)	(3)
January	291,465	51,435	240,030
February	291,465	51,435	240,030
March	291,465	51,435	240,030
April	211,522	37,328	174,194
May	163,328	28,822	134,506
June	138,847	24,502	114,345
July	111,690	19,710	91,980
August	122,400	21,600	100,800
September	162,945	28,755	134,190
October	192,015	33,885	158,130
November	291,465	51,435	240,030
December	291,465	51,435	240,030

It is stated that this proposed abandonment will reduce the annualized total CD from 77,683,058 Mcf to 63,974,266 Mcf.

Comment date: March 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

8. ANR Pipeline Company

[Docket No. CP89–833–000]

February 24, 1989.

Take notice that on February 15, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–833–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Enron Gas Marketing, Inc. (Enron), a marketer, under ANR's blanket certificate issued in Docket No. CP88–532–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated September 8, 1988, it proposes to receive up to 200,000 dt equivalent of natural gas per day from specified points located in Oklahoma, Texas, Offshore Texas, Louisiana, Offshore Louisiana and Kansas, and redeliver the gas into the facilities of Northern Illinois Gas Company in Will County, Illinois. ANR states that the peak day and average day volumes would be 200,000 dt equivalent of natural gas per day and annual volumes would be 73,000,000 dt equivalent of natural gas. It is stated that ANR commenced a 120-day transportation service for Enron under § 284.223(a) as reported in Docket No. ST89–2104.

ANR further states that no facilities need be constructed to implement the service. It is indicated that ANR would provide the service for a term expiring September 30, 1990, but would continue the service on a month to month basis until terminated by either party upon thirty days prior written notice to the other specifying a termination date at the end of such period or any successive monthly period thereafter. ANR proposes to charge the rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Northwest Pipeline Corporation

[Docket No. CP89–845–000]

February 24, 1989.

Take notice that on February 17, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–845–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of TXO Production Corp. (TXO), a natural gas producer, under its blanket authorization issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for TXO, pursuant to an interruptible transportation service agreement dated September 26, 1988, as amended September 26, 1988. The transportation agreement is effective for a term continuing until October 31, 1989, and month to month thereafter until terminated by either party on thirty days written notice. Northwest proposes to transport approximately 8,000 MMBtu on a peak day; 5,800 MMBtu on an average day; and on an annual basis 2,100,000 MMBtu of natural gas for TXO. Northwest proposes to transport the subject gas through its transmission system from wells located in Rio Blanco County, Colorado and Grand and Uintah Counties, Utah, to delivery points located in Grand County, Utah and Mesa County, Colorado.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on January 4, 1989, as reported in Docket No. ST89–2161–000.

Comment date: April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Williams Natural Gas Company

[Docket No. CP89–846–000]

February 24, 1989.

Take notice that on February 17, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–846–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by reclaim measuring and appurtenant facilities serving one industrial customer in Cherokee County, Kansas, under WNG's blanket certificate issue in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to abandon the facilities in response to a request from the customer, Robert H. Case, who was receiving the gas from WNG for his meat packing plant. It is stated that the facilities were installed under Commission authorization in Docket No. CP65–77. It is explained that the customer has requested the abandonment because he plans to switch to an alternate fuel. It is asserted that the proposed abandonment will have no effect on WNG's capacity and

no effect on WNG's rate schedules or tariffs on file with the Commission.

Comment date: April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP89-786-000]

February 24, 1989.

Take notice that on February 8, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-786-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a interruptible transportation service on behalf of Texican Natural Gas Company (Texican), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that pursuant to an Interruptible Gas Transportation Agreement dated January 1, 1989, it would transport a maximum daily quantity of 20,600 MMBtu. United further states that is would utilize existing facilities to provide the proposed transportation service.

United states that it commenced the transportation of natural gas for Texican on January 4, 1989, as reported in Docket No. ST89-1941-000, for a 120-day period pursuant to § 284-223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Northwest Pipeline Corporation

[Docket No. CP89-843-000]

February 27, 1989.

Take notice that on February 17, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-843-000, a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Williams Gas Marketing (Williams), a marketer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to an Agreement dated September 26, 1988, as amended September 26, 1988, December 8, 1988, and January 25, 1989, it proposes to transport up to 37,000 MMBtu per day of natural gas for Williams under Rate Schedule TI-1, for a term continuing to September 30, 1989, and month to month thereafter, subject to termination upon 30 business days written notice by either party.

Northwest will transport the subject gas through its transmission system from wells in Lincoln, Sublette and Sweetwater Counties, Wyoming to delivery points located in Lincoln County, Wyoming.

Northwest also states that no construction of new facilities will be required to provide this transportation service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 37,000 MMBtu, 22,000 MMBtu and 8,000,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-2206 (filed February 13, 1989).

Comment date: April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Tennessee Gas Pipeline Company

[Docket No. CP89-873-000]

February 27, 1989.

Take notice that on February 21, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-873-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Energy Marketing Exchange, Inc. (Energy Marketing), a marketing company, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that it would transport, on an interruptible basis, up to 15,000 dekatherms of natural gas per day for Energy Marketing. Tennessee further states that it proposes to transport natural gas for Energy Marketing from points of receipt located offshore Louisiana, offshore Texas, and in the states of Louisiana, Ohio, Texas, Mississippi, Pennsylvania, New Jersey, Alabama, and New York. The points of delivery and ultimate points of delivery are located in the states of New York and Pennsylvania, it is stated.

Tennessee further states that the total volume of gas to be transported for Energy Marketing would be 15,000 dekatherms on a peak day, 15,000 dekatherms on an average day and 5,475,000 dekatherms on an annual basis. Tennessee also states that it would perform the proposed transportation service for Energy Marketing pursuant to a service agreement dated October 24, 1988, between Tennessee and Energy Marketing.

Tennessee states that it commenced the transportation for Energy Marketing pursuant to § 284.223(a)(1) of the Commission's Regulations on January 6, 1989, at Docket No. ST89-2125 for a 120-day period. Tennessee further states that all facilities are in place to provide for this service.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Panhandle Eastern Pipe Line Company

[Docket No. CP89-847-000]

February 27, 1989.

Take notice that on February 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-847-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Union Texas Products Corporation (Union Texas or shipper), a shipper and gas processor of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle requests authority to transport up to 80,000 dt equivalent of natural gas per day on an interruptible basis on behalf of Union Texas, pursuant to a transportation agreement dated January 6, 1989, between Panhandle and Union Texas. It is stated that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. It is stated the Panhandle will then transport and redeliver the subject gas, less fuel used and unaccounted for line loss, to Northern Natural Gas Company in Kiowa County, Kansas. Panhandle states that the shipper's estimated average day and annual

quantities would be 50,000 dt equivalent of natural gas and 18,250,000 dt equivalent of natural gas, respectively. It is stated that the transportation charge for this service is stated that the transportation charge for this service is based upon Panhandle's currently effective Rate Schedule PT. Panhandle further states that service under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations commenced on January 10, 1989, as reported in Docket No. ST89–2084.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Panhandle Eastern Pipe Line Company

[Docket No. CP89–849–000]

February 27, 1989.

Take notice that on February 21, 1989, Panhandle Eastern Pipe Line Company, (Panhandle) P.O. Box 1642, Houston, Texas, 77251–1642 filed in Docket No. CP89–849–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Amoco Production Company (Amoco), under its blanket authorization issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Amoco, a shipper and producer of natural gas, pursuant to a transportation agreement Rate Schedule PT dated January 5, 1989 (Contract No. P–PLT–2602). The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days' prior notice to the other party. Panhandle proposes to transport on a peak day up to 150,000 dekatherm equivalent; on an average day up to 25,000 dekatherm equivalent; and on an annual basis 9,125,000 dekatherm equivalent of natural gas for Amoco. Panhandle proposes to receive the subject gas from various exiting points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois. The volumes would be transported and redelivered. Less fuel used and unaccounted for line loss to Amoco's Wattenburg Plant Inlet in Adams County, Colorado. The gas would be purchased from producers in Texas, Oklahoma, Colorado, Kansas, Louisiana, offshore Louisiana, offshore Texas, Canada, Illinois, and Wyoming. Panhandle proposes to charge the then effective, applicable rates and charges under its PT rate schedule. It is averred that the subject gas would be purchased by local distribution companies, producers and intrastate pipelines. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on January 5, 1989, as reported in Docket No. ST89–2085–000.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Panhandle Eastern Pipe Line Company

[Docket No. CP89–819–000]

February 27, 1989.

Take notice that on February 14, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89–819–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to a certain existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to partially abandon sales service to Citizens Gas Fuel Company (Citizens). Panhandle states that Citizens has elected under § 284.10 of the Commission's Regulations to convert a portion of its daily Contract Demand (CD) to firm transportation effective as of February 1, 1989. Panhandle explains that the firm transportation would be rendered under the terms and conditions of its Rate Schedule PT. Accordingly, Panhandle proposes to reduce Citizens' annualized total CD from 4,115,570 Mcf to 3,389,220 Mcf.

Comment date: March 20, 1989 in accordance with Standard Paragraph F at the end of the notice.

17. Trunkline Gas Company

[Docket No. CP89–868–000]

February 27, 1989.

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–868–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Conoco, Inc. (Conoco), a producer, under the blanket certificate issued in Docket No. CP86–586–000 on April 30, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated January 11, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dt per day equivalent of natural gas for Conoco. Trunkline states that it would transport the gas from various existing receipt points on its system, and deliver such gas, less fuel and unaccounted for line loss, at an interconnection with Columbia Gulf Transmission Company in St. Mary Parish, Louisiana.

Trunkline advises that service under § 284.223(a) commenced January 13, 1989, as reported in Docket No. ST89–2174. Trunkline further advises that it would transport 10,000 dt on an average day and 3,650,000 dt annually.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Natural Gas Pipeline Company of America

[Docket No. CP89–835–000]

February 27, 1989.

Take notice that on February 16, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–835–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Archer Daniels Midland Company (Archer), under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on a firm basis, up to a maximum of 15,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule FTS) for Archer from receipt points located in Oklahoma, Kansas and Iowa to a delivery point located in Iowa. Natural anticipates transporting, on an average day 15,000 MMBtu and an annual volume of 5,475,000 MMBtu.

Natural states that the transportation for natural gas for Archer commenced

January 1, 1989, as reported in Docket No. ST89-2260-000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Trunkline Gas Company

[Docket No. CP89-872-000]

February 27, 1989.

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-872-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide tan interruptible transportation service for TXG Gas Marketing Company (TXG), a marketer, under the blanket certificate issued in Docket No. CP86-586-000 on April 30, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated January 5, 1989, under its Rate Schedule PT, it proposes to transport up to 30,000 dt per day equivalent of natural gas for TXG. Trunkline states that it would transport the gas from various existing receipt points on its system, and deliver such gas, less fuel and unaccounted for line loss, at an interconnection at the Texaco, Inc., Henry Plant in Vermilion Parish, Louisiana.

Trunkline advises that service under Section 284.223(a) commenced January 5, 1989, as reported in Docket No. ST89-2136. Trunkline further advises that it would transport 15,000 dt on an average day and 5,475,000 dt annually.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Trunkline Gas Company

[Docket No. CP89-870-000]

February 27, 1989.

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-870-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for ANR Gathering Company (ANR), a marketer, under the blanket certificate issued in Docket No. CP86-586-000 on April 30, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated November 22, 1988, under its Rate Schedule PT, it proposes to transport up to 100,000 dt per day equivalent of natural gas for ANR. Trunkline states that it would transport the gas from various existing receipt points on its system, and deliver such gas, less fuel and unaccounted for line loss, at an interconnection with Tennessee Gas Pipeline Company in Bolivar County, Mississippi.

Trunkline advises that service under § 284.223(a) commenced January 11, 1989, as reported in Docket No. ST89-2171. Trunkline further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385-214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed witnin the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Gashell,

Secretary.

[FR Doc. 89-4903 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10573-000-New York]

Trenton Falls Hydroelectric Co.; Surrender of Preliminary Permit

February 27, 1989.

Take notice that Trenton Falls Hydroelectric Company, permittee for the proposed Fowlerville Hydro Project No. 10573, has requested that its preliminary permit be terminated. The permit was issued on September 9, 1988, and would have expired August 31, 1991. The project would have been located on the Moose River in Lewis County, New York. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed the request on January 30, 1989, and the preliminary permit for Project No. 10573 shall remain in affect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4904 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-45-014]

Arkla Energy Resources, a Division of Arkla, Inc.; Proposed Change in FERC Gas Tariff

February 24, 1989.

Take notice that on February 17, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc. tendered for filing certain tariff sheets to its FERC Gas Tariff. AER states that these tariff sheets implement the Stipulation and Agreement Regarding Interim Rates, which was approved by the Commission in an order dated January 23, 1989. AER states in its compliance filing that it reserves the right to seek rehearing of the January 23 order.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by March 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4905 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA89-3-000]

Corpus Christi Transmission Co.; Petition For Adjustment

February 27, 1989.

Take notice that on February 3, 1989, Corpus Christi Transmission Company (Corpus Christi) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) a petition for adjustment from § 284.123(b)(1)(ii) of the Commission's regulations to permit Corpus Christi to base its rates for NGPA section 311(a) transportation services on the rate contained in Tariff Sheet No. T-01 currently on file with the Railroad Commission of Texas (Texas).

Corpus Christi States that the gas will be transported under transportation agreements providing for rates not greater than comparable intrastate service as reflected in rates filed with Texas. Corpus Christi further states that Tariff Sheet No. T-01 provides for a rate of $0.03 per MMBtu.

Corpus Christi submits that § 284.123(b)(1)(ii) of the Commission's regulations allows an intrastate pipeline to elect to charge a rate filed with the appropriate State agency for section 311(a) transportation if the service is comparable and that the Commission has interpreted comparable service to refer to city gate service. Corpus Christi states that since it does not render city gate service, it is requesting this adjustment to permit it to base its rates on its tariff on file with Texas.

Corpus Christi states that upon issuance of an adjustment it would, within a reasonable time, not to exceed 30 days, make a filing with supporting documents necessary for Texas to make a determination that its rate proposed for section 311(a) service is cost-based and fair and equitable. It agrees to use for its section 311(a) services rates not in excess of the rate found by Texas to be cost-based and fair and equitable. Corpus Christi states that the adjustment it seeks is necessary to prevent special hardship and inequity that would otherwise result from forcing it to submit a § 284.123(b)(2) filing and would avoid unnecessary dual agency review.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**. The petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4906 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2392-004—Vermont, New Hampshire]

Georgia-Pacific Corp.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

February 24, 1989.

The license for the Gilman Project No. 2392 located on the Connecticut River in Essex County, Vermont and Coos County, New Hampshire, expires on December 31, 1990. The statutory deadline for filing applications for new license was December 31, 1988. An application for new license has been filed as follows:

Project No.	Applicant	Contact
2392-004	Georgia-Pacific Corporation, Gilman, VT 05904.	Mr. David G. Blanchette, Georgia-Pacific Corporation, Gilman, VT 05904.

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is June 30, 1989.

The following is an approximate schedule and procedures that will be followed in processing the application.

Date	Action
February 21, 1989.	The Commission notified the applicant that its application has been accepted. The notification of acceptance specified the need for additional information and the date the information is due.
March 31, 1989..	Commission issues public notice of application that has been accepted describing project and establishing dates for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Steven H. Rossi at (202) 376-9814.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4907 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-225-004]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

February 24, 1989.

Take notice that on February 17, 1989, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, submitted revised tariff sheets:

Original Volume No. 1

Second Substitute Thirtieth Revised Sheet No. 4 Alternate Second Substitute Thirtieth Revised Sheet No. 4 Third Substitute Third Revised Sheet No. 61-C.

Copies of this filing were served on Inter-City's jurisdictional customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4908 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2323 Vermont & Massachusetts]

New England Power Co.; Intent To File an Application for a New License

February 24, 1989.

Take notice that on December 22, 1988, New England Power Company, the existing licensee for the Deerfield River Hydroelectric Project No. 2323, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2323 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Deerfield River in Windham & Bennington Counties, Vermont, and Franklin & Berkshire Counties, Massachusetts. The principal works of the Deerfield River Project include eight dam and reservoir developments: Somerset, Searsburg, Harriman, Sherman, Deerfield No. 5, Deerfield No. 4, Deerfield No. 3, and Deerfield No. 2. Somerset is a storage reservoir, and the other seven developments have powerhouses with a total installed capacity of 81,500 kW; all have transmission line connections and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capital Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 25 Research Drive, Westborough, MA 01582, Attn: L.P. Sicuranza, telephone (508) 366-9011.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4909 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2315 South Carolina]

South Carolina Electric & Gas Co. Intent To File an Application for a New License

February 24, 1989

Take notice that on December 29, 1988, South Carolina Electric & Gas Company, the existing licensee for the Neal Shoals Hydroelectric Project No. 2315, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2315 was issued effective April 1, 1963, and expires December 31, 1993.

The project is located on the Broad River in Union and Chester Counties, South Carolina. The principal works of the Neal Shoals Project include a 1,087-foot-long dam; reservoir of 600 acres; a 141-foot-long powerhouse containing four generating units with a total capacity of 5,200 kW; 14 miles of two-circuit, 13.2-kV, 3-phase transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1426 Main Street, Columbia, SC 29218.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4910 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of January 2 Through January 6, 1989

During the week of January 2 through January 6, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Terry J. Fox, 1/5/89, KFA-0248

Terry J. Fox filed an Appeal from a denial by the Portland Office of the Bonneville Power Administration of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the search performed by the BPA's Freedom of Information official was adequate. Important issues that were considered in the Decision and Order were the adequacy of the search performed and whether the requested documents were agency records.

Tri-City Herald, 1/5/89, KFA-0241

The Tri-City Herald filed an Appeal from a determination issued to it by the Richland Operations Office concerning a Request for Information which the newspaper had submitted under the Freedom of Information Act (FOIA). The newspaper sought documents relating to the decision of the DOE or its contractor, Westinghouse Hanford Company, to settle litigation involving two former Westinghouse employees. The Operations Office identified a letter from Westinghouse labor counsel to the Operations Office's Chief Counsel as being responsive to the request. The Operations Office withheld the letter on the ground that it was attorney work-product and, therefore, exempt from disclosure under Exemption 5 of the FOIA. In considering the Appeal, the DOE found that the letter was attorney work-product and that the agency could properly assert the attorney work-product privilege with respect to

contractor documents. Accordingly, the Appeal was denied.

Walbridge J. Powell, 1/3/89, KFA-0235

Walbridge J. Powell filed an Appeal from a determination issued to him by the DOE's Richland Operations Office concerning a Request for Information that he had filed under the Freedom of Information Act (FOIA). In his Request for Information, Mr. Powell sought a bibliography of the latest 25 safety studies for the Hanford, Washington nuclear reactor. The Operations Office denied the request on the ground that the requested document did not exist. In considering the Appeal, the DOE found that the Operations Office had made an adequate search for the requested document and, therefore, upheld the denial. In making this determination, the DOE noted that Mr. Powell had failed to cooperate with the DOE in its attempts to help him reformulate his request in a manner that would produce responsive documents.

Motion for Discovery

Tesoro Petroleum Corporation and Kenco Refining, Inc., 1/4/89, KRD-0540 and KRD-0541

Kenco Refining, Inc. (Kenco) and Tesoro Petroleum Corporation (Tesoro) filed separate Motions for Discovery in connection with their Statements of Objections to the Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued to them on November 6, 1986. In the PRO, the ERA alleged that Kenco improperly received small refiner bias entitlements as a result of an April 1977 processing agreement with Tesoro. The ERA also alleged that Kenco and Tesoro improperly reported sales of residual fuel oil into the East Coast Market, thereby permitting Tesoro to avoid entitlements obligations on that fuel oil.

Tesoro sought discovery of (1) certain factual materials in the PRO audit file; and (2) documents which would show the unreasonableness of the ERA's delay in issuing the PRO. With respect to the first request, the DOE found that the ERA had already released the requested factual material to Tesoro in response to a Freedom of Information Act (FOIA) request and, therefore, that the instant request was moot. With respect to the second request, the DOE found that Tesoro had not shown adequate grounds to obtain access to documents in the audit file concerning the timing of the enforcement action. Accordingly, Tesoro's Motion for Discovery was denied.

Kenco sought discovery of (1) all documents in the audit file that concerned Kenco, Tesoro and the purchasers of the petroleum products produced under the processing agreement; (2) depositions and transcripts of all oral interviews conducted by the ERA; and (3) contemporaneous construction discovery of the disputed regulation. Most of the documents responsive to Kenco's first request and all of the documents responsive to Kenco's second request had been released to Tesoro through its FOIA request. The DOE accordingly granted Kenco access to this previously released material. The DOE also granted Kenco discovery of all other factual, non-deliberative materials in the audit file that concerned Kenco, Tesoro and the purchasers of the products produced under the processing agreement. The DOE found that Kenco had not demonstrated that its requested contemporaneous construction discovery would provide relevant and material information. Accordingly, Kenco's Motion for Discovery was granted in part.

Refund Applications

Aminoil U.S.A., Inc./Ellison Enterprises, et al., 1/6/89, RF139-161, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by six claimants in the Aminoil U.S.A., Inc. special refund proceeding. The firms submitted cost banks which indicated that they did not recover the full amount of their increased costs during the period of regulation. The firms also submitted market price comparisons upon which the DOE determined the degree that each firm was injured. After examining the firms' applications and supporting documentation, the DOE concluded that the firms should receive refunds totaling $138,574, representing $77,850 in principal and $60,724 in interest.

Atlantic Richfield Company/Capitol Products Corp., et al., 1/3/89, RF304-1576, et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this decision totalled $67,230, representing $53,017 in principal and $14,213 in interest.

Atlantic Richfield Company/John B. Fine, et al., 1/3/89, RF304-10108, et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed by 44 applicants in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO. The DOE concluded that the applicants should receive refunds totalling $72,253, representing $56,980 in principal and $15,273 in interest.

Exxon Corporation/Corning Glass Works, et al., 1/6/89, RF307-4464, et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $33,094, representing $28,770 in principal and $4,324 in interest.

Exxon Corporation/Tate Oil Co., Inc., Service Oil Co. and The Carolinas Domestic Gas Co., 1/6/89, RF307-2695; RF307-2755, RF307-2756

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Tate Oil's allocable share exceeds $5,000. Instead of making an injury showing to receive its full allocable share, Tate elected to receive either 40 percent of its allocable share or $5,000, whichever is greater. Service Oil's allocable share exceeds $5,000 and, like Tate, it elected to receive either 40 percent of its allocable share or $5,000, whichever is greater. The allocable share of Carolinas is under $5,000, and thus the firm ordinarily would be entitled to receive its full allocable share. However, because Carolinas is a subsidiary of Service Oil, the two applications were combined. Each firm will receive a refund based on 40 percent of its purchase volume. The sum of the refunds granted in this Decision is $15,745, representing $13,687 in principal and $2,058 in interest.

Exxon Corporation/Tavo Salinas Exxon, et al., 1/6/89, RF307-1823, et al.

The DOE issued a Decision and Order concerning eight Applications for

Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. Four of the applicants disagreed with the purchase volumes recorded in their Exxon volume printout, and the DOE approved the gallonage figures they submitted based on purchase invoices. Accordingly, the DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $6,707, representing $5,831 in principal and $876 in interest.

Gulf Oil Corporation/C T P Petroleum Co., Inc. and Ossipee Oil Co., Inc., 1/6/89, RF300–2616, RF300–2617

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by C T P Petroleum Co., Inc., and Ossipee Oil Co., Inc. Because the firms were under common ownership during the consent order period, they could not be considered separately under the small claims presumption of injury. The two companies collectively purchased 10,452,013 gallons of Gulf product, and were granted a refund under the small claims presumption of injury. The amount of the refund granted in this Decision is $6,406, representing $5,000 in principal and $1,406 in interest.

Gulf Oil Corporation/Columbus Southern Power Company, RF300–4153, Ohio Power Company and RF300–10640, and Appalachian Power Company, 1/5/89, RF300–10641

The DOE issued a Decision and Order concerning three Applications for Refund filed by the Columbus Southern Power Company, The Ohio Power Company and the Appalachian Power Company, all regulated public utilities, in the Gulf Oil Corporation special refund proceeding. The applicants applied for refunds on a total of 16,666,695 gallons of covered Gulf products. Each applicant documented its purchases and was granted a refund. Appalachian, whose requested refund exceeded $5,000, certified that it will notify its appropriate state regulatory agency of any refund received in the Gulf proceeding and that it will pass through the amount of any refund received to its customers. This Decision granted total refunds of $13,666.

Gulf Oil Corporation/Edelmiro Lezasvain, et al., 1/6/89, RF300–6691 et al.

The DOE issued a Decision and Order concerning 74 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $191,700.

Gulf Oil Corporation/Fiore Bros., Inc., et al., 1/4/89, RF300–1771 et al.

The DOE issued a Decision and Order concerning nine Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $62,305.

Gulf Oil Corporation/Henderson County Board of Education, et al., 1/3/89, RF300–5706 et al.

The DOE issued a Decision and Order concerning 68 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $109,211.

Gulf Oil Corporation/L.S. Riggins Oil Company, 1/3/89, RF300–10651

The DOE issued a Supplemental Order rescending a refund granted on December 15, 1988 to L.S. Riggins Oil Company from the Gulf Oil Corporation special refund proceeding (*Gulf Oil Corporation/Dallas Gulf Service, et al.*). The applicant has previously been approved a refund for a virtually identical application (*Gulf Oil Corporation Singing River Electric Power Association, et al.*, issued November 10, 1988). In the Supplemental Order, the DOE added 123,287 gallons to its November 10, 1988 approval to reflect the additional gallonage claimed in the application approved on December 15, 1988. Accordingly, the DOE amended the November 1988 Order to grant a refund to the applicant of $2,321, based on purchases of 2,830,488 gallons.

Gulf Oil Corporation/Pennsylvania Power & Light Company, 1/5/89 RF300–2042

The DOE issued a Decision and Order concerning an Application for Refund filed by Pennsylvania Power & Light Company, a regulated public utility, in the Gulf Oil Corporation special refund proceeding. In accordance with the requirements of the Gulf proceeding, Pennsylvania Power & Light has certified that it will notify its appropriate state regulatory agency of any refund received in the Gulf proceeding and that it will pass through the amount of any refund received to its customers. The refund granted in this Decision is $52,472.

Gulf Oil Corporation/Rite Way Oil & Gas Co., Inc., et al., 1/4/89, RF300–6476 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $140,679.

Gulf Oil Corporation/Rohrbacher Bros., Inc., et al., 1/4/89, RF300–2075 et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $101,050.

Gulf Oil Corporation/William Hennis, et al., 1/6/89, RF300–0869 et al.

The DOE issued a Decision and Order concerning 161 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $257,630.

Murphy Oil Corporation/Schwegmann Giant Super Markets, et al., 1/4/89, RF309–306 et al.

The DOE issued a Decision and Order granting Applications for Refund filed by six purchasers of refined petroleum products in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Murphy. One applicant received approval for a refund at the 40 percent mid-level presumption while the other five were approved at the $5,000 small-claims presumption level. The total amount of refunds approved in this Decision is $66,705, representing $59,086 in principal and $7,619 in interest.

Prince George's County Public Schools, 1/6/89 RF272–31507

The Prince George's County Public Schools (PGCPS), a county school district, filed an Application for Refund in the Subpart V crude oil refund proceedings. An objection was filed by Philip Kalodner, counsel for Utilities, Transporters and Manufacturers, claiming that the school district should not receive a refund on the grounds that

governmental authorities are ineligible for a refund from the 20 percent reserved for directly injured claimants and the school district passed through all overcharges. The DOE rejected both these arguments. Accordingly, the DOE awarded PGCPS a refund of $15,628.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Chelmsford Public Schools, *et al*	RF272-18431	1/3/89	34	$6,974
Clifford Wagner, *et al*	RF272-41400	1/5/89	140	3,346
Ervin J. Zeamer, Sr., *et al*	RF272-41601	1/6/89	160	3,448
Huron Co. Sheriff's Dept., *et al*	RF272-43803	1/5/89	125	3,238
James W. Stewart, *et al*	RF272-42400	1/5/89	146	3,682
Mrs. L.S. Covey, *et al*	RF272-41800	1/5/89	151	3,297
Norbert C. Portratz, *et al*	RF272-41001	1/5/89	105	2,732
Raymond Griffin, *et al*	RF272-42800	1/6/89	161	4,123
Roseville Community Schools, *et al*	RF272-337	1/6/89	48	35,091
William E. Callander, *et al*	RF272-41200	1/5/89	131	3,814

Dismissals

The following submissions were dismissed:

Name	Case No.
AP Propane, Inc.	RF272-75187
Anderson Propane Service	RF139-194
Ben Ford Grocery	RF300-7367
Best Oil Company	RF309-388
Carberry's Arco	RF304-3724
Collins Park Gulf, Inc.	RF300-8834
Dee-Way Grocery #2	RF300-7033
Dee-Way Grocery #1	RF300-7034
Duncan Market	RF300-9990
Enon Stop & Shop	RF300-7041
Fast-Shop Superette	RF300-7056
Floyd Wholesale, Inc.	RF300-180
Gill Community	RF300-7373
H & M Service	RF300-7639
High Point Gulf	RF300-9984
Hoover Garage	RF300-7368
Irby Powell Grocery	RF300-7342
J & J Service Station	RF300-7316
Jack P. Food Mart	RF300-7050
Jay Food Mart	RF300-7640
Jenkin Gravel	RF300-7677
Joes Gas	RF300-9980
King Gas Company	RF139-204
Lake Way Conv.	RF300-9893
Lakeland	RF300-9889
Mac Service Station	RF300-7349
Meijer Wholesale	RF300-9848
Murray Gulf	RF300-9892
Murrays Station	RF300-9978
North Penn Gulf #1	RF300-8530
North Penn Gulf #2	RF300-8531
Peter Place	RF300-7661
R B M Service	RF300-7338
Rays Roost Truck Stop	RF300-9975
Regional Transit Service, Inc	RF300-9332
Resort International, Inc	RF300-7679
Roadway Gas	RF300-7319
Roberson Gulf Tire Service	RF300-7676
Rocky Mtn. Ent., Inc.	RF272-12650
Ronnie Ray	RF300-9988
Ross Gib Gulf Station	RF300-7733
Warren-Munn Gulf	RF300-264
Washington Crossing Exxon	RF307-1829

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

February 24, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

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Issuance of Decisions and Orders During the Week of January 16 Through January 20, 1989

During the week of January 16 through January 20, 1989, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Atlantic Richfield Company/AERNI & Hitzel Fuel, Inc., et al., 1/18/89, RF304-2106 et al.

The DOE issued a Decision and Order concerning 75 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end-users, each applicant was presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totalling $155,283, representing $122,159 in principal and $33,124 in interest.

Atlantic Richfield Company/Anthony Spina et al., 1/18/89, RF304-674 et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $8,034 ($6,304 in principal and $1,730 in interest).

Atlantic Richfield Company/Buzz & Tex Service, et al., 1/18/79, RF304-1024 et al.

The DOE issued a Decision and Order concerning 37 Applications for Refund filed by 35 claimants in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $40,436, representing $31,810 in principal and $8,626 in accrued interest).

Atlantic Richfield Company/Cole Bros, Harvesting, Inc. et al., 1/18/89, RF304–634 et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of less than $5,000. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $3,109 ($2,445 in principal and $664 in interest).

Atlantic Richfield Company/Dave's ARCO, Inc. et al., 1/19/89, RF304–1502 et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $62,602 ($49,249 in principal and $13,353 in interest).

Atlantic Richfield Company/Hennckens ARCO, et al., 1/18/89, RF304–2000 et al.

The DOE issued a Decision and Order concerning 73 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end-users, each applicant was presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totalling $113,390, representing $89,202 in principal and $24,188 in interest.

Cone Mills Corp., 1/18/89, RF272–21

Cone Mills filed a Motion for Reconsideration seeking to overturn OHA's denial of its Subpart V crude oil refund application. The DOE denied the Motion, determining that Cone Mills had waived its right to a Subpart V refund when it filed for a refund from the Surface Transporter Escrow in the *Stripper Well* refund proceeding.

East End Gulf Service, et al., 1/24/89, RF272–64679 et al.

The DOE issued a Decision and Order denying 27 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

Exxon Corporation/Francis Kacar et al., 1/19/89, RF307–224 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $3,684 ($3,183 principal plus $501 interest).

Exxon Corporation/Rockwell International Et al., 1/18/89, RF307–4714 et al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 50 applications for Refund from consent order funds obtained from Exxon Corporation. Each Applicant sought a refund of less then $5,000, and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted is $34,531.

Gulf Oil Corporation/Army and Air Force Exchange Service, 1/17/89, RF300–4348

The DOE issued a Decision and Order to the Army and Air Force Exchange Service (AAFES) in the Gulf Oil Corporation special refund proceeding. The AAFES' primary purpose is to provide discount goods and services to military personnel. Any profits generated by its sales operations are used for the benefit of the military personnel who purchase from it. Because the covered products claimed by the AAFES were sold to and consumed by military personnel, and because any refund received by the AAFES will be used for the benefit of military personnel, the DOE granted the AFFES a full volumetric refund totaling $300,374 on 366,309,441 gallons of covered Gulf products.

Gulf Oil Corporation/Commerce Propane, Greenville Automatic Gas Co., 1/17/89, RF300–4030 and RF300–4031

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Commerce Propane and Greenville Automatic Gas Co. Because the firms were under common ownership during the consent order period, and because their allocable share exceeded $5,000 they could not be considered separately. The two firms collectively purchased 8,938,026 gallons of covered Gulf products, and their Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, which includes both principal and interest, is $6,406.

Gulf Oil Corporation/Embassy Gulf, 1/19/89, RF300–1081

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Embassy Gulf. The applicant, a service station owned by Carl Lotto, sought a refund on 11,930,376 gallons of coverd Gulf products. Mr. Lotto also owned another service station for which he filed an Application under the name of Carl L. Lotto (Case No. RF300–1066). Mr. Lotto was previously granted a refund of $765 for 943,902 gallons in Case RF300–1066. Because the firms were under common ownership, they were considered together for purposes of applying the $5,000 presumption of injury. Accordingly, the principal amount previously awarded to Mr. Lotto was subtracted from the $5,000 refund to which he was entitled for both stations. Mr. Lotto was granted a refund of $5,632, which includes both principal and interest, on the Embassy Gulf Applications.

Gulf Oil Corporation/Farrell Lines Incorporated et al., 1/17/89, RF300–641 et al.

The DOE issued a Decision and Order concerning 64 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $369,699.

Gulf Oil Corporation/Gray's Gulf Service, et al., 1/17/89, RF300–1142 et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $32,913.

Gulf Oil Corporation/Greensboro, North Carolina, 1/17/89, RF300–10654

On December 20, 1988, the Office of Hearings and Appeals issued a Decision and Order to M & A Petroleum, *et al.* (Case Nos. RF300–2451, *et al.*) in which Greensboro, North Carolina, Case No. RF300–2696, was issued a refund of

$6,406. In this Decision Greensboro was incorrectly considered as a reseller applicant who wished to elect the 40 percent presumption. Greensboro is not a reseller, however, but an end-user, and is therefore entitled to a full volumetric refund without submitting an injury showing. Accordingly, the DOE issued a Supplemental Order indicating that Greensboro should receive a supplemental refund of $1,007.

Gulf Oil Corporation/James P. Lowe, et al., 1/17/89, RF300–509 et al.

The DOE issued a Decision and Order concerning 86 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $149,080.

Gulf Oil Corporation/Montgomery Mall Gulf Service, et al., 1/17/89, RF300–6453 et al.

The DOE issued a Decision and Order concerning 34 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presmption of injury. The sum of the refunds granted in this Decision is $64,543.

Gulf Oil Corporation/P.D. Humphrey Co., Inc. Mathieu Oil Co., Inc., 1/17/89, RF300–5458 and RF300–5459

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by P.D. Humphrey Co., Inc. and Mathieu Oil Co., Inc. Although the two firms have common ownership now, they did not have common ownership during the consent order period. Since the two firms did not have common ownership during the consent order period, the DOE considered the applications separately. Each application was approved using a presmption of injury. The sum of the refunds granted in this Decision is $8,287.

Gulf Oil Corporation/Walker's Auto Service, et al., 1/17/89, RF300–2277, et al.

The DOE issued a Decision and Order concerning 63 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $106,416.

Hanna Nickel Smelting Company, 1/17/89, RF272–10490

Hanna Nickel Smelting Company (Hanna) filed an Application for Refund in the Subpart V crude oil refund proceeding. A group of states filed on objection to Hannas's application, claiming that the firm should not be eligible to receive a refund because it had not established that it was an injured end-user. The DOE rejected the states' arguments, finding that they had not submitted relevant material sufficient to overcome the presumption of injury available to end-user applicants in this proceeding. The DOE then reviewed the application and found that the information provided therein supported the firm's claim. Accordingly, Hanna was granted a refund of $6,065.

Johnson Controls Inc., 1/19/89, RC272–16

On January 5, 1989 the DOE issued a Decision granting 146 Applications for Refund in the crude oil refund proceedings. *James W. Stewart,* (Case Nos. RF272–42400, *et al.*). It has come to the DOE's attention that one of the applicants in that Decision, Johnson Controls Inc. (Case No. RF272–42583) (Johnson) should have been granted a refund based on a much larger gallonage. Accordingly, this Decision rescinds *James W. Stewart,* with respect to Johnson. Johnson's application based on the correct gallonage will be considered at a later date under a new case number.

Owens-Corning Fiberglas Corporation, 1/19/89, RF272–10027 and RD272–10027

Owens-Corning Fiberglas Corporation (O-C) filed an Application for Refund from crude oil monies available for disbursement under 10 C.F.R. Part 205, Subpart V, based upon its purchases of refined petroleum products, during the period August 19, 1973 through January 27, 1981. A group of thirty States and two Territories (collectively "the States") filed objections in opposition to the receipt of any refund by O-C on the basis that the firm had suffered no actual injury as a result of crude oil overcharges. In addition, the States filed a Motion for Discovery. In considering O-C's refund application, the DOE determined that the firm had consumed petroleum products, principally asphalt, in the production of fiberglas-based construction materials. Thus, the DOE determined that O-C was presumptively injured by crude oil overcharges based upon the presumption of injury accorded to end-users outside of the petroleum industry. The DOE further determined that the States had failed to rebut the presumption of injury in their objections since the States' general showing with regard to O-C's profitability and industry-wide data pertaining to the construction industry were not sufficiently probative of the extent to which O-C actually passed through increased petroleum product costs. On the same basis, the DOE determined that the States had failed to support adequately their Motion for Discovery. Accordingly, O-C's Application for Refund was approved, and the States' objections and Motion for Discovery were denied. The total refund amount approved in this Decision and Order is $662,319.

Standard Oil Co. (Indiana)/New York (Saint Regis Mohawk Tribe), 1/17/89, RQ21–492

The DOE issued a Decision and Order granting the second-stage refund application filed by the State of New York on behalf of the Saint Regis Mohawk Tribe in the Standard Oil Co. (Indiana) (Amoco I) special refund proceeding. The tribe requested permission to use $805 in Amoco I monies to purchase two items, a setback thermostat control device and a battery charger timer. In light of the small sum of money involved, the DOE found the plan to be adequately restitutionary. Accordingly, the tribe's request was granted.

Total Petroleum/Madden Oil Company, 1/19/89, RF310–337

The DOE issued a Decision and Order in which it reconsidered an Application for Refund filed by Madden Oil Company, a motor gasoline and diesel fuel reseller, in the Total Petroleum special refund proceeding. After a thorough evaluation of Madden's refund claim and the examination of a separate refund claim advanced by Madden in an earlier refund proceeding, the DOE determined that Madden was granted a refund on December 20, 1988 to which it was not entitled. The $26,935 refund awarded to Madden on that date was therefore rescinded. The DOE also determined that under the standards established in *Total Petroleum Inc.*, 17 DOE ¶ 65,542 (1988), Madden was eligible for a refund of $5,742 ($5,000 of principal and $742 of interest).

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Orders:

Name	Case No.	Date	No. of applicants	Refund
Flasher Public School District et al.	RF272-9389	1/17/89	63	$23,950
Greene County et al.	RF272-14322	1/18/89	83	27,455
John W. Osborne et al.	RF272-46600	1/19/89	196	1,124
Marvin Thon et al.	RF272-47801	1/19/89	143	3,974
Robert Donnell et al.	RF272-14810	1/18/89	54	18,415
Underbrink Farms et al.	RF272-35002	1/19/89	59	10,987

Dismissals

The following submissions were dismissed:

Bruce Caley's Exxon	RF307-236
	RF307-237
Cargill, Inc.	RD272-54938
Covelli's A-1	RF304-3598
D & G Getty	RF265-2767
Frank L. Bordell	KFA-0256
H.B. Spradley	RF272-49321
Hayden-T Exxon	RF307-831
Osborn's Exxon	RF307-2068
Ray E. Temeyer	RF272-60388
Troy's Braodmoor Exxon	RF307-1781
Westshore Exxon	RF307-7010
Witco Corporation	RF272-69165

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

February 24, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-4935 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3530-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NESHAP for Asbestos (Subpart M)—Information Requirements (EPA ICR #0111.04; OMB #2060-0101). This is a request for reinstatement of an existing collection.

Abstract: Demolition and renovation contractors must notify EPA or the State(s) of each demolition and/or renovation operation where the amount of friable asbestos exceeds 80 linear meters (260 linear feet) on pipes or 15 square meters (160 square feet) on other facility components. EPA or the States will use these notifications to ensure proper work practices and to plan and schedule inspections.

Burden Statement: The estimated public reporting burden for this collection of information is approximately 4 hours per response per respondent. This estimate includes the time to read instructions, gather necessary data, and complete and review the forms used to notify the proper officials.

Respondents: Demolition and renovation contractors.

Estimated No. of Respondents: 7,000.

Estimated Total Annual Burden on Respondents: 336,000 hours.

Frequency of Collection: Each demolition/renovation operation.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1432; Protection of Stratospheric Ozone—Reporting and Recordkeeping Requirements; was approved 01/10/89; OMB #2060-0170; expires 01/31/92.

EPA ICR #1084; NSPS for Nonmetallic Mineral Processing Plants—Reporting and Recordkeeping; was approved 01/13/89; OMB #2060-0050; expires 01/31/92.

EPA ICR #1393; National Sewage Sludge Questionnaire Survey; was approved 01/12/89; OMB #2040-0119; expires 09/30/90.

EPA ICR #1331; Accidental Release Information Program; was approved 01/19/89; OMB #2050-0065; expires 01/31/91.

EPA ICR #1214; Pesticide Product Registration Maintenance Fee; was approved 01/11/89; OMB #2070-0100; expires 01/31/92.

EPA ICR #1488; Superfund Site Evaluation and Hazard Ranking Information Collection; was approved 01/17/89; OMB #2050-0095; expires 01/31/92.

EPA ICR #0012; Motor Vehicle Exclusion Requests; was approved 01/13/89; OMB #2060-0124; expires 01/31/92.

EPA ICR #1349; National Survey of Solid Waste from Mineral Processing; was approved 02/02/89; OMB #2050-0098; expires 12/31/89.

EPA ICR #1463; Revision to the National Oil and Hazardous Substances Pollution Contingency Plan; was approved 01/30/89; OMB #2050-0096; expires 01/31/91.

EPA ICR #1487; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; was approved 01/30/89; OMB #2010-0020; expires 10/31/91.

EPA ICR #1396; National Residential Radon Survey Pretest; was aproved 01/26/89; OMB #2060-0173; expires 06/30/89.

EPA ICR #1062; NSPS Monitoring Requirements for Coal Preparation Plants Subpart Y; was approved 01/30/89; OMB #2060-0122; expires 01/31/92.

EPA ICR #0002.04; Pretreatment Program Information Requirements; was disapproved 01/26/89.

Dated: February 17, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-4854 Filed 3-1-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-68015; FRL-3531-5]

Chapman Chemical Co.; Notice of Intent to Cancel Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Cancel and Preliminary Determination Governing Sale and Use of Existing Stocks.

SUMMARY: By letter dated February 5, 1988, EPA directed Chapman Chemical Company ("Chapman") to supply to the Agency within 30 days a complete and accurate confidential statement of formula for the company's pesticide product ALDREC, bearing EPA Registration Number 1022-220. As of February 21, 1989, Chapman has not complied with this directive. The Agency has determined that Chapman's continuing failure to submit a complete and accurate confidential statement of formula is in violation of section 3(c)(1)(E) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and that the appropriate course of action is to cancel Chapman's ALDREC registration pursuant to FIFRA section 6(b). Accordingly, the Agency by this Notice announces its intention to cancel Chapman's registration for ALDREC. The Agency also has preliminarily determined not to permit sale and use of existing stocks of ALDREC if its registration is canceled.

DATE: A request for a hearing on cancellation or a request to modify preliminary determination governing existing stocks by a registrant must be received by April 3, 1989 or 30 days from receipt by mail of this Notice, whichever is the later applicable deadline. A request for a cancellation hearing or modification of the existing stocks determination from any other adversely affected person must be received by April 3, 1989. Any other person who wishes to comment on whether the Agency should allow sale or use of existing stocks of ALDREC should provide those comments by April 3, 1989.

ADDRESS: Three copies of any request for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2400).

Requests for, or comments applicable to, an existing stocks allowance should be submitted to George LaRocca at the address above.

SUPPLEMENTARY INFORMATION: ALDREC is a termiticide product containing the active ingredient aldrin (chemical name: 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-exo-1,4-endo-5,8-dimethanonaphthalene; CAS Registry No. 309-00-2). Chapman Chemical Company (Chapman) received a registration from EPA for ALDREC in 1959. It is assumed that Chapman at one time acquired the aldrin for use in ALDREC from Shell Chemical Company, since the companies of the Royal Dutch Shell Group in the United States and Europe have been the sole producers of aldrin in the world from the time of its first registration as a pesticide in the 1950's. In recent years, Shell's pesticide registrations for aldrin products in the United States have been held by the Scallop Corporation (a Shell Group company); Scallop voluntarily canceled all of its aldrin registrations on May 15, 1987. The canceled Scallop registrations included the only aldrin product for manufacturing use (also called a technical grade product), which is used by formulator companies such as Chapman in making their own registered pesticide products. Chapman has never identified a new, registered source of supply of aldrin to the Agency, although required to do so under current law.

This Notice is organized into two parts. Part I describes the background and basis for the cancellation of Chapman's ALDREC registration. Part II describes the procedures which will be followed in implementing the regulatory actions set forth in this Notice.

I. Basis For Cancellation

Under section 3(c)(1)(E) of FIFRA, applicants for registration are required to submit to EPA the complete formula of their pesticide products. For formulators, such as Chapman, who purchase a pesticidal ingredient from another registered source, EPA requires that the formulator include as part of its complete formula, the identity of the registered source of supply and the EPA registration number of that component of the formulator's product in order that EPA can ascertain the complete composition of the formulated product.

EPA first required an updated confidential statement of formula from Chapman as part of a Data Call-in Notice dated February 23, 1984. Chapman failed to provide the requested information. The Agency again requested by letter dated September 16, 1985, that Chapman provide the Agency with a complete formula for its ALDREC registration; once again, Chapman did not respond, and the registration was subsequently suspended pursuant to FIFRA section 3(c)(2)(B) on July 15, 1987. Finally, the Agency sent Chapman a letter dated February 5, 1988, in which the Agency once again required that Chapman submit, within 30 days, a complete and accurate confidential statement of formula to the Agency. In this last letter, the Agency pointed out that it considers an accurate and current statement of formula to be an important and continuing requirement of registration, and that Chapman's continuing failure to provide a complete and accurate statement of formula would constitute grounds for cancellation. As of February 21, 1989, Chapman has still not submitted an updated confidential statement of formula in response to the Agency's communications.

Under section 6(b) of FIFRA, the Administrator may issue a notice of intent to cancel any pesticide if, among other things, the "labeling or other material required to be submitted does not comply with the provisions of [FIFRA]." As noted, the Agency believes that registrants have a continuing obligation under section 3(c)(1)(E) to provide the Agency with the complete formula of their pesticide products. EPA is mandated by FIFRA to assess the risks and benefits of registered pesticides. EPA's ability to perform this assessment is at least partially dependent upon information being supplied by registrants. Compliance with the requirement to supply the Agency with an up-to-date statement of formula is a basic element of registration support required of registrants; failure to fully identify the ingredients in a pesticide product greatly hampers the Agency's ability to assess the risks and benefits associated with the product.

Chapman has been directed to supply

the Agency with the complete formula of its ALDREC registration three times since 1984, and yet the Agency continues to lack a complete and accurate formula for ALDREC. Under the circumstances, cancellation is appropriate because Chapman has failed to provide material required to be submitted pursuant to FIFRA, and because material submitted does not comply with the provisions of the Act (since Chapman's statement of formula has not been properly updated).

Before taking any cancellation action under section 6(b), the Administrator must consider restricting a pesticide's use as an alternative to cancellation, and must further consider the effect of a cancellation upon the agricultural economy. This cancellation action is being taken because of the failure of Chapman to submit a complete and updated confidential statement of formula to the Agency, and not because of specific concerns about the safety of the use of ALDREC. Restricting the use of a pesticide pursuant to section 3(d) of FIFRA is not an appropriate response to the failure to provide the Agency with correct information required to be submitted under the Act.

As to the effect of a cancellation upon the agricultural economy, ALDREC is a termiticide product used for structural pest control; it is not an agricultural product. Further, the registration of ALDREC has been suspended under section 3(c)(2)(B) since July 1987, and it is not believed that there is any appreciable quantity of remaining existing stocks of ALDREC. Thus, cancellation action would not be likely to have any appreciable effect upon any sector of the economy, including the agricultural sector. Finally, it should be noted that the Agency frequently requires information from registrants in order to perform its regulatory responsibilities. Where a registrant fails to provide to the Agency even the most basic of information—the formula of its product—it would in most circumstances be inappropriate for the Agency to allow the registration to continue even if a cancellation would result in some hardship to the agricultural economy.

A draft of this Notice of Intent to Cancel the registration of ALDREC was sent to the Department of Agriculture (USDA) for their review as required by section 6(b) of FIFRA. The USDA had no objection to the proposed cancellation. The draft document was also sent to the FIFRA Scientific Advisory Panel for their review as required by section 25(d) of FIFRA. The Panel was asked to waive its review of the Notice since there was not risk data or scientific procedure at issue. The Panel granted a waiver of its review of the Notice.

Under section 6(a)(1) of FIFRA, the Administrator may permit the continued sale and use of existing stocks of pesticide products whose registrations have been canceled pursuant to section 6(b) to such extent, under such conditions, and for such uses as he or she may specify if he or she determines that such sale or use is not inconsistent with the purposes of FIFRA and will not have unreasonable adverse effects on the environment. EPA is not aware that there are any existing stocks of ALDREC. EPA also has questions concerning the feasibility of making the requisite finding for a pesticide product containing aldrin as the active ingredient (EPA has identified risk concerns associated with exposure to aldrin termiticides). At this time, EPA has not made a finding pursuant to section 6(a)(1) that would allow continued sale and use of ALDREC. Under such circumstances, no further sale nor use of ALDREC would be permitted upon cancellation pursuant to this Notice. It is therefore the Agency's preliminary determination that neither sale nor use of existing stocks of ALDREC will be allowed after cancellation of the ALDREC registration.

II. Procedures

This Notice announces EPA's intent to cancel Chapman's ALDREC registration, and further provides preliminary notification that if ALDREC is canceled, the Agency proposes not to permit any further sale or use of ALDREC. This part of the Notice explains how the registrant or any other adversely affected person may request a hearing on whether ALDREC should be canceled or may request that the Agency allow the continued sale and use of existing stocks of ALDREC if the registration is canceled. It also invites any interested person to provide comments on whether the Agency should permit the continued sale and use of existing stocks of ALDREC if the registration is canceled.

A. Request For Cancellation Hearing

Under section 6(b) of FIFRA, registrants and other adversely affected persons are entitled to respond to this Notice by requesting a hearing on whether the registration for ALDREC should be canceled. Unless a hearing is properly requested, the cancellation will become final by operation of law either 30 days after this publication in the **Federal Register** or 30 days after Chapman receives a copy of this Notice, whichever occurs later.

To contest the cancellation action set forth in this Notice, the registrant may request a hearing within 30 days of receipt of this Notice, or within 30 days from publication of this Notice, whichever occurs later. Any other person adversely affected by the cancellation action set forth in this Notice may request a hearing within 30 days of publication of this Notice in the **Federal Register.**

A registrant or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR Part 164. These procedures require, among other things, that all requests must identify the specific product for which a hearing is requested, and that all requests must be received by the Hearing Cleak within the applicable 30-day period. Failure to comply with these requirements may result in denial of the request for a hearing. Requests for a hearing must also be accompanied by specific objections to the portions of this Notice that a party seeks to challenge.

Requests for a hearing must be submitted to the Hearing Clerk at the address specified eariler in this Notice. If a hearing on the action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearing under FIFRA section 6 (40 CFR Part 164). Any such hearing shall be held in the Washington, DC metropolitan area. If no hearing is requested by the end of the applicable 30-day period, the registration of ALDREC will be canceled by operation of law.

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearing arising from this Notice of Intent to Cancel: the Office of the Administrative Law Judge, the Office of the Judicial Officer, the Administrator, and the Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication on the merits of any of the issues involved in this proceeding with the trial staff or

any interested person not employed by EPA, without fully complying with the applicable regulations.

B. Existing Stocks

As noted above, the Administrator has made a preliminary determination that no sale or use of existing stocks of ALDREC should be permitted if the registration is canceled. If any person would like to challenge this preliminary determination and receive permission to sell or use existing stocks of ALDREC following cancellation, he or she must submit a request within 30 days of publication of this Notice to George LaRocca at the address listed earlier in this Notice under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Any such request should include information concerning the extent of existing stocks of ALDREC and should contain factual information sufficient to support a finding that continued sale or use of such stocks will not be inconsistent with the purposes of FIFRA and will not result in unreasonable adverse effects on the environment. Any person wishing to comment on whether continued sale or use of existing stocks of ALDREC should be permitted may also supply such comments within 30 days of publication of this Notice to the individual identified above.

If a timely request to allow sale or use of existing stocks is received and ALDREC's registration is canceled, the Agency will consider the request and make a final determination as to whether sale or use of existing stocks should be permitted. If no request is received within 30 days from publication of this Notice, the preliminary determination will become final upon cancellation of the registration for ALDREC, and no sale or use of existing stocks of ALDREC will be permitted after cancellation of the registration.

Dated: February 21, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-4849 Filed 3-1-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44526; FRL-35321]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tetrabromobisphenol A (TBBPA) (CAS No. 79-94-7) and hexafluoropropene (CAS No. 116-15-4), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St. SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for TBBPA were submitted by Great Lakes Chemical Corporation pursuant to a test rule at 40 CFR 799.4000. It was received by EPA on February 6, 1989. The submissions describe 1) the determination of the biodegradability of TBBPA in soil under aerobic conditions and 2) the determination of the biodegradability of TBBPA in soil under anaerobic conditions. Chemical fate testing is required by this test rule. Tetrabromobisphenol A is used primarily as a reactive flame retardant, and, to a lesser extent, as an additive flame retardant.

Test data for hexafluoropropene was submitted by the Chemical Manufacturers Association on behalf of E.I. du Pont de Nemours and Company pursuant to a test rule at 40 CFR 799.1700. It was received by EPA on January 23, 1989. The submission describes a ninety-day inhalation toxicity study in rats and mice with hexafluoropropene. Subchronic toxicity testing is required by this test rule. Hexafluopropene is used as a precursor in the manufacture of highly specialized polymers and elastomers.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44526). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St. SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: February 22, 1989.

Gary E. Timm,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-4846 Filed 3-1-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59864; FRL-3531]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89-63, 89-65, 89-66, 89-67, March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-63

Manufacturer. Suvar Corporation.

Chemical. (G) Copolymer alkyd resin.

Use/Production. (G) Used as a vehicle component in "flushed" pigment

formulations for use in printing ink. Prod. range: Confidential.

Y 89–65

Manufacturer. Confidential
Chemical. (G) Water reducible acrylic polymer.
Use/Production. (S) Water reducible can coating. Prod. range: 160,000 kg/yr.

Y 89–66

Importer. Confidential.
Chemical. (G) Styrene acrylic polymer salt.
Use/Import. (G) Paper size, open nondispersive use. Import range: Confidential.

Y 89–67

Importer. Confidential.
Chemical. (G) Styrene acrylic copolymer salt.
Use/Import. Paper size, open nondispersive use. Import range: Confidential.

Date: February 22, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89–4844 Filed 3–1–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59863; FRL–3531–9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces a receipt of five such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89–58, February 22, 1989.
Y 89–59, 89–60, February 26, 1989.
Y 89–61, February 27, 1989.
Y 89–62, February 28, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street SW, Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays

Y 89–58

Importer. Kanek Texas Corporation.
Chemical. (G) Styrene butadiene acrylic polymer.
Use/Import. (S) Heat deflection modifier for plastics. Import range: Confidential.

Y 89–59

Manufacturer. Mazer Chemicals Div. PPG Industries, Inc.
Chemical. (G) Aliphatic polyester.
Use/Production. (G) Additive for lubricants. Prod. range: Confidential.

Y 89–60

Manufacturer. Mazer Chemicals, Div. PPG Industries.
Chemical. (G) Aliphatic polyester.
Use/Production. (G) Additive for lubricants. Prod. range: Confidential.

Y 89–61

Manufacturer. Confidential.
Chemical. (S) 2,2-dimethyl-1,3-propanediol; 2-ethyl-2(hydroxymethyl)-1,3-propanediol; benzoic acid; 1,3-isobenzofluranedione; 1,3-enzendicarboxylic acid, trans-(butanediol acid; hexanediol acid.
Use/Production. (S) Polymer for paint coating. Prod. range: 100,000–250,000 kg/yr.

Y 89–62

Manufacturer. Confidential.
Chemical. (G) Modified hydrocarbon resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Date: February 22, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89–4845 Filed 3–1–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

February 22, 1989.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0040
Title: Application for Aircraft Radio Station License and Temporary Aircraft Radio Station Operating Authority
Form No.: FCC 404/404–A
Action: Extension
Respondents: Individuals, State or local governments, Business (including small business), and Non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 25,668 Respondents, ten minutes each
Needs and Uses: Filing is required for a new station license, or renewal or modification of an existing license. Applicants for a new license may operate the aircraft radio station for 90 days under the temporary authority provided for on FCC 404–A. The data on the FCC 404 is used to determine the applicant's eligibility and to issue a license.

OMB No.: 3060–0136
Title: Temporary Permit to Operate a General Mobile Radio Service System
Form No.: FCC 574–T
Action: Extension
Respondents: Individuals, State or local governments, Business (including small business), and Non-profit institutions
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 1,500 Recordkeepers, six minutes each

Needs and Uses: Eligible applicants for new or modified radio stations in the GMRS complete the form for immediate authorization to operate the radio station (valid for 180 days), and retain it during the processing of an application for license grant.

OMB No.: 3060-0139
Title: Request for Approval of Proposed Amateur Radio Antenna and Notification of Action
Form No.: FCC 854
Action: Extension
Respondents: Individuals
Frequency of Response: On occasion
Estimated Annual Burden: 250 Respondents, 30 minutes each
Needs and Uses: Submission of the data is necessary to determine whether the antenna height requested would be a hazard to air navigation, and whether painting and/or lighting of the antenna is required.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-4884 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 89-27; FCC 89-10]

Applications, Hearings, Determinations, etc.: Great American Radio Corp.

AGENCY: Federal Communications Commission.

ACTION: Order to show cause and notice of apparent liability.

SUMMARY: This action is an Order to Show Cause to determine if Great American Radio Corp., licensee of Radio Station KCKO(AM), Spokane, Washington, violated §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules by remaining silent without authority, and if so, whether the license for that station should be revoked.

EFFECTIVE DATE: February 15, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ben Halprin, Enforcement Division, Mass Media Bureau, (202) 632-3860.

Order to Show Cause and Notice of Apparent Liability

In the Matter of: Great American Radio Corp., Spokane, Washington; Licensee of Radio Station KCKO(AM), Spokane, Washington; Order to Show Cause Why the License of Station KCKO(AM), Spokane, Washington, Should Not Be Revoked.

Adopted: January 19, 1989.

Released: February 15, 1989.

By the Commission:

1. The Commission has before it for consideration: (a) the license of Great American Radio Corp., for Radio Station KCKO(AM), Spokane, Washington; and, (b) the results of the Commission's investigation into KCKO's unauthorized silent status.

2. On May 13, 1985, the Commission granted KCKO permission to remain silent until August 15, 1985. After that permission expired, attempts to contact KCKO by mail resulted in return of Commission correspondence marked "unclaimed." Commission personnel, thereafter, attempted inspection and monitoring to ascertain the station's status. Monitoring during the week of March 23, 1987, revealed that the station was not operating. An attempt to inspect the station at its studio's last known address, N. 2804 Argonne Road in Spokane, WA, on March 23, 1987, was unsuccessful. The studio was vacant and locked, with a "For Rent" sign in front. A visit to the transmitter site did not reveal any evidence of a radio transmitter building or antenna towers. Subsequent to the attempted monitoring and inspection, the Commission sent a letter of inquiry to the licensee. The letter, dated June 13, 1988, was returned stamped: "Return to Sender—Attempted Not Known." [1] Thus, it appears that the station has not resumed operation since August 15, 1985. Furthermore, the licensee has neither requested Commission permission to remain off the air since its silent authority expired on August 15, 1985, nor turned in its license, in apparent violation of §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules.[2]

[1] Section 1.5 of the Commission's Rules requires that the licensee keep the Commission informed of any change in its mailing address.

[2] Section 73.1740(a)(4) provides:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, DC not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

Section 73.1750 provides:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

3. Accordingly, *it is ordered,* That pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Great American Radio Crop. is directed to show cause why the license for Radio Station KCKO(AM), Spokane, WA, should not be revoked, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(a) To determine whether Great American Radio Corp. violated §§ 73.1740(a)(4) and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the foregoing issue, whether Great American Radio Corp. possesses the requisite qualifications to be or remain licensee of the captioned radio station.

4. *It is further ordered,* That the Chief, Mass Media Bureau, is directed to serve upon Great American Radio Corp., within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (a) and (b) above.

5. *It is further ordered,* That pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to both issues.

6. *It is further ordered,* That to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* § 1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See* § 1.92 (c) and (d) of the Commission's Rules.[3]

[3] The Commission has recently delegated authority for cases such as this to the Mass Media Bureau. *See In the Matter of Radio Northwest Broadcasting Company,* MM Docket 88-107, Adopted December 6, 1988.

7. *It is further ordered,* That if it is determined that the hearing record does not warrant an Order revoking the license for Station KCKO(AM), Spokane, WA, it shall be determined, pursuant to section 503(b) of the Communications Act of 1934, as amended, whether an order for forfeiture shall be issued against Great American Radio Corp. in an amount not exceeding twenty thousand dollars ($20,000) for the willful and repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules.

8. *It is further ordered,* That this document constitutes a notice of apparent liability for willful or repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion herein should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

9. *It is further ordered,* That the Chief, Mass Media Bureau, send a copy of this Order by *Certified Mail-Return* Receipt Requested, to: Great American Radio Corp., Radio Station KCKO(AM), N. 2804 Argonne Road, Spokane, WA 99206.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-4870 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 89-28; FCC 89-11]

Applications, Hearings, Determinations, etc.; Mega Broadcasting Corp.

AGENCY: Federal Communications Commission.

ACTION: Order to show cause and notice of apparent liability.

SUMMARY: This action is an Order to Show Cause to determine if Mega Broadcasting Corp., licensee of Radio Station WRPZ(AM), Paris, Kentucky, violated §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules by remaining silent without authority, and if so, whether the license for that station should be revoked.

EFFECTIVE DATE: February 15, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ben Halprin, Enforcement Division, Mass Media Bureau, (202) 632-3860.

Order to Show Cause and Notice of Apparent Liability

In the Matter of: Mega Broadcasting Corp., Paris, Kentucky; Licensee of Radio Station WRPZ(AM), Paris, Kentucky; Order to Show Cause Why the License of Station WRPZ(AM), Paris, Kentucky, Should Not Be Revoked.

Adopted: January 19, 1989.

Released: February 15, 1989.

By the Commission:

1. The Commission has before it for consideration: (a) the license of Mega Broadcasting Corp. for Radio Station WRPZ(AM), Paris, Kentucky; and, (b) the results of its investigation into WRPZ's unauthorized silent status.

2. On November 20, 1987, the Commission received a complaint alleging that WRPZ(AM) had not broadcast programming since October 11, 1987. Investigation by Commission personnel determined that the station had definitely ceased operation by the end of November 1987. Monitoring by Commission staff during the week of May 23, 1988, indicated that the station remained non-operational. Subsequent to the attempted monitoring, the Commission sent a letter of inquiry to the licensee at the address that appeared in Commission records. The letter, dated June 17, 1988, was returned stamped: "Return to Sender. No Forwarding Order on File." [1] Thus, it appears that the station has not resumed operation since at least November 1987. Furthermore, the licensee has neither requested Commission permission to remain off the air nor turned in its license, in apparent violation of §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules.[2]

3. Accordingly, *it is ordered,* That pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Mega Broadcasting Corp. is directed to show cause why the license for Radio Station WRPZ(AM), Paris, KY, should not be revoked, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(a) To determine whether Mega Broadcasting Corp. violated §§ 73.1740(a)(4) and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the foregoing issue, whether Mega Broadcasting Corp. possesses the requisite qualifications to be or remain licensee of the captioned radio station.

4. *It is further ordered,* That the Chief, Mass Media Bureau, is directed to serve upon Mega Broadcasting Corp., within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (a) and (b) above.

5. *It is further ordered,* That pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to both issues.

6. *It is further ordered,* That to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* §1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See*

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[1] Section 1.5 of the Commission's Rules requires that the licensee keep the Commission informed of any change in its mailing address.

[2] Section 73.1740(a)(4) provides:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, DC not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

Section 73.1750 provides:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

§ 1.92(c) and (d) of the Commission's Rules.

7. *It is further ordered,* That if it is determined that the hearing record does not warrant an Order revoking the license for Station WRPZ(AM), Paris, KY, it shall be determined, pursuant to section 503(b) of the Communications Act of 1934, as amended, whether an Order for Forfeiture shall be issued against Mega Broadcasting Corp. in an amount not exceeding twenty thousand dollars ($20,000.00) for the willful and repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules.

8. *It is further ordered,* That this document constitutes a notice of apparent liability for willful or repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion herein should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

9. *It is further ordered,* That the Secretary send a copy of this Order by *Certified Mail-Return Receipt Requested,* to: Mega Broadcasting Corp., Radio Station WRPZ(AM), 525 High Street, No. 204, Paris, KY 40578.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-4871 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-561; FCC 88-394]

Order to Show Cause; Jack E. Ondracek

AGENCY: Federal Communications Commission.

ACTION: Order to show cause and notice of apparent liability.

SUMMARY: This action is an Order to Show Cause to determine if Jack E. Ondracek, licensee of Radio Station KRGL(AM), Myrtle Creek, Oregon, violated §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules by remaining silent without authority, and if so, whether the license for that station should be revoked.

EFFECTIVE DATE: January 25, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ben Halprin, Enforcement Division, Mass Media Bureau, (202) 632-3860.

Order to Show Cause and Notice of Apparent Liability

Adopted: December 2, 1988.

Released: January 25, 1989.

By the Commission:

1. The Commission has before it for consideration: (a) The license of Jack E. Ondracek, for Radio Station KRGL(AM), Myrtle Creek, Oregon; and, (b) the results of its investigation into KRGL's unauthorized silent status.

2. In September 1986, the Commission received information indicating that the captioned licensee had ceased operation of KRGL in mid-March 1986. Commission personnel visited the site on November 17, 1986, and found it abandoned. The Commission sent a letter of inquiry to the licensee at the address that appeared in Commission records. The letter, postmarked July 15, 1987, was returned stamped: "Return to Sender-Box Closed." [1] Commission personnel revisited the site on March 10, 1988, and again found it abandoned. Thus, it appears that the station has not resumed operation since it left the air in March 1986. Furthermore, the licensee has neither requested Commission permission to remain off the air nor turned in its license, in apparent violation of §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules.[2]

3. Accordingly, *It Is Ordered,* That pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Jack E. Ondracek is *Directed to Show Cause* why the license for Radio Station KRGL(AM) Myrtle Creek, Oregon, should not be *Revoked,* at a hearing to be held at a time and location specified in a subsequent Order, upon the following issue:

(a) To determine whether Jack E. Ondracek violated §§ 73.1740(a)(4) and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the foregoing issue, whether Jack E. Ondracek possesses the requisite qualifications to be or remain licensee of the captioned radio station.

4. *It is Further Ordered,* That the Chief, Mass Media Bureau, is directed to serve upon Jack E. Ondracek, within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (a) and (b) above.

5. *It is Further Ordered,* That pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to both issues.

6. *It is Further Ordered,* That to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* § 1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See* § 1.92 (c) and (d) of the Commission's Rules.

7. *It is Further Ordered,* That if it is determined that the hearing record does not warrant an Order revoking the license for Station KRGL(AM), Myrtle Creek, OR, it shall be determined, pursuant to section 503(b) of the Communications Act of 1934, as

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[1] Section 1.5 of the Commission's Rules requires that the licensee keep the Commission informed of any changes in its mailing address.

[2] Section 73.1740(a)(4) provides:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, DC not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

Section 73.1750 provides:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

amended, whether an *Order for Forfeiture* shall be issued against Jack E. Ondracek in an amount not exceeding twenty thousand dollars ($20,000.00) for the willful and repeated violation of Sections 73.1740 and/or 73.1750 of the Commission's Rules.

8. *It is Further Ordered,* That this document constitutes a *Notice of Apparent Liability* for willful or repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion herein should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

9. *It is Further Ordered,* That the Chief, Mass Media Bureau, send a copy of this Order by *Certified Mail-Return Receipt Requested,* to: Jack E. Ondracek, Radio Station KRGL(AM), P.O. Box 6001, Myrtle Creek, OR 97457.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-4869 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows.

Type of Review: Renewal without any change.

Title: Application for a Bank to (1) Establish a Branch, (2) Move its Main Office or Branch, and (3) Establish a Remote Service Facility.

Form Number: None (letter application).

OMB Number: 3064-0070.

Expiration Date of Current OMB Clearance: May 31, 1989.

Frequency of Response: On occasion.

Respondents: Insured State nonmember banks applying for FDIC consent to establish branches, move main offices or branches, or establish remote service facilities.

Number of Respondents: 1,253.

Number of Responses Per Respondent: 1.

Total Annual Responses: 1,253.

Average Number of Hours Per Response: 7.

Total Annual Burden Hours: 8,771.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before May 1, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the clearance of the information collection pertaining to the application, by insured State nonmember banks, to obtain FDIC's consent to establish branches, move main offices or branches, or establish remote service facilities. The applicant is required to furnish information, in letter form, about the location of the proposed site, the involvement of bank insiders in the proposal, the impact of the proposal on the environment and compliance with local zoning laws, historic preservation considerations, community services considerations, and evidence of public notice of the proposal. The information furnished by the applicant is used by the FDIC as a basis for evaluating the factors required by statute (12 U.S.C. 1828(d) and 1816) before approving the application.

Dated: February 24, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-4828 Filed 3-1-89; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Renewal without any change.

Title: Application for Federal Deposit Insurance By Operating Noninsured Institutions.

Form Number: FDIC 6200/07.

OMB Number: 3064-0069.

Expiration Date of Current OMB Clearance: April 30, 1989.

Frequency of Response: On occasion.

Respondents: Operating noninsured banks applying for FDIC deposit insurance as State nonmember banks.

Number of Respondents: 46.

Number of Responses Per Respondent: 1.

Total Annual Responses: 46.

Average Number of Hours Per Response: 15.

Total Annual Burden Hours: 690.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before May 1, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the use, without change, of application form FDIC 6200/07. The form is used by operating noninsured banks applying for FDIC deposit insurance as State nonmember banks. The form requires the applicant institution to furnish information about its financial history and condition, capital structure, future earnings prospects, the character of its management, and information about the community served. The information collected on the form is used by the FDIC as a basis for evaluating the factors required by

statute (12 U.S.C. 1815(a) and 1816) before approving the application.

Dated: February 24, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-4829 Filed 3-1-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010987-008

Title: United States/Central America Liner Association

Parties: Crowley Caribbean Transport, Inc., Sea-Land Service, Inc., Seaboard Marine Ltd., Crowley Trailer Marine Transport, Corp.

Synopsis: The proposed modification would permit the parties to charter space to each other on vessels owned or operated by them.

By Order of the Federal Maritime Commission.

Dated: February 27, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-4895 Filed 3-1-89; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 89-02]

Matson Navigation Co., Inc.; Transportation of Cargoes Between Ports and Points Outside Hawaii and Islands Within the State of Hawaii; Enlargement of Time to Reply

This proceeding was initiated by Petition for Declaratory Order ("Petition") filed by Matson Navigation Company, Inc. Replies to the Petition currently are due March 1, 1989.

Young Brothers, Ltd., now has filed a motion for a stay of the proceeding pending a decision by the State of Hawaii Public Utilities Commission regarding a related complaint action brought by Young Brothers against Matson Navigation Company, Inc. In the cover letter accompanying the Motion, Young Brothers requests an extension until May 1, 1989, to file a reply to Matson's Petition should the Commission determine not to grant the request for a stay.

The Commission has determined that in order to allow time for filing of replies to the motion for stay and for Commission consideration of the motion and of the alternative request for extension of time, a short extention of time for filing replies to the Petition for Declaratory Order is appropriate. Accordingly, time for filing such replies is enlarged to March 24, 1989.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-4783- Filed 3-1-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0661]

Risk on Automated Clearing House Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board") is proposing several changes in the way that Federal Reserve Banks treat automated clearing house ("ACH") transactions. These changes are intended as additional steps in implementing the risk reduction policy adopted by the Board in May, 1985. (*See,* policy statement, "Reducing Risks on Large-Dollar Electronic Funds Transfer Systems," 50 FR 21120, May 22, 1985.) The changes proposed incldue:

- Granting finality to receivers of ACH credit transactions at 6:30 p.m. local time on the settlement day;
- Treating credits given to originators of ACH debit transactions as final payments at 10:00 a.m. local time on the business date following the settlement day;
- Advising depository institutions with on-line connections to Fedwire that payments are being reversed by the time set for finality of ACH payments;
- Endeavoring to advise off-line institutions by telephone that payments are being reversed;
- Reserving the right to debit the reserve/clearing accounts of depository institutions originating ACH credit transactions at any time during the settlement day; and
- Granting credit for debit item adjustments only when the Reserve Banks can recover credit from the originating depository institution.

DATE: Comments must be received by April 3, 1989.

ADDRESS: Comments, which should refer to Docket No. R-0661, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Florence Young, Adviser, Division of Federal Reserve Bank Operations (202/452-3955); Oliver I. Ireland, Associate General Counsel (202/452-3625), or Elaine M. Boutilier, Senior Attorney, Legal Division (202/452-2418), Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only,* Telecommunications Devise for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

Two types of payments flow over the ACH mechanism—credit transactions and debit transactions. In the case of ACH credit transactions, funds flow from the originator of the payment to the receiver. The majority of ACH credit payments are payroll, pension, or annuity payments. In the case of ACH debit transactions, funds flow from the receiver to the originator. The majority of ACH debit transactions are used to collect insurance premiums, bill payments, and mortgage loan payments. In addition, ACH debit transactions are used for cash concentration purposes, that is, to draw down balances from the accounts of affiliates or subsidiaries located throughout the country, and they account for the largest proportion of the dollar value of ACH transactions.

The ACH is a value-dated mechanism. Transactions may be originated one or two days before the settlement date and may be processed on one of the two operating cycles—a day or a night cycle. All ACH transactions are provisional

payments. The Reserve Banks currently reserve the right to reverse credits given to receivers of ACH credit transactions until the entries are posted on the settlement day, and credit given for debit transactions may currently be reversed by a Reserve Bank until the opening of business on the day following settlement. In addition, institutions receiving debit transactions have the right to return them.

Previous Proposal and Comments

In December 1986, the Board requested comments on the following proposals (Docket No. R–0591, 51 FR 45043, December 16, 1986):

- To provide finality to receivers of ACH credit transactions amounting to $5,000 or less at 1:00 p.m. local time on the settlement date;
- To provide finality to receivers of ACH credit transactions amounting to more than $5,000 when the Reserve Banks have received actually and finally collected funds;
- to notify receivers of ACH credit transactions if payments were reversed before the time of finality on a "best efforts" basis; and
- to retain the right to reverse ACH debit transactions at any time until the Reserve Bank has received actually and finally collected funds.

The Board received 112 comments on these proposals. The majority of commenters opposed the proposals. In the case of the proposals concerning ACH credit transactions, commenters stated that there was no good reason to distinguish between small and large-dollar credit transactions, that the dollar amounts proposed were arbitrary, and that finality should be granted at a specific time for all ACH credit transactions. Eighty-five percent of the commenters believed that small-dollar credit transactions should be treated as final at the opening of business on the settlement day. All commenters believed that a specific time should be set for the finality of large-dollar credit transactions, and more than 50 percent believed that all ACH credit transactions should be treated as final at the opening of business on the settlement day.

Commenters believed that delaying finality for ACH credit transactions amounting to $5,000 or more and ACH debit transactions until the Reserve Banks had received actually and finally collected funds would add substantially to the risk of participating institutions and their customers. They indicated that the increased uncertainty resulting from adoption of this proposal would reduce the attractiveness of the ACH mechanism. A majority of commenters argued that finality should be granted at a specific time and indicated that they would prefer that the same time be designated for both debit and credit transactions.

If the Reserve Banks were to grant finality for all ACH credit transactions at the opening of business on the settlement day, as many commenters on the 1986 proposal suggested, the credit exposure currently faced by receiving institutions would be eliminated. The Reserve Banks' risk, however, would be substantially increased because they would not be able to reverse any payments on the settlement day without regard to whether the originating institution had sufficient funds in its account to cover the payments.

The Board believes that no distinction should be made concerning the finality accorded large and small-dollar ACH credit transactions. While commenters would prefer that finality be granted at the opening of business on the settlement day, the Board believes that the risk faced by the Reserve Banks is too great to adopt this proposal. In order to balance the risk faced by the Reserve Banks with that faced by receiving institutions, the Board believes that finality for ACH credit transactions should be granted at 6:30 p.m. local time, a time late enough on the settlement day to permit the Reserve Banks to recover some funds, if it is determined that an originator is unable to cover the payments that it has originated.

With regard to the proposal to treat credits given for ACH debit transactions as final only after they had received actually and finally collected funds, the majority of commenters opposed this proposal. They indicated that a specific time should be adopted after which a Reserve Bank would not reverse credits given for ACH debit transactions.

The Reserve Banks' risk would not differ substantially under the terms of the current operating circular or the proposal published for comment in 1986. To provide greater certainty for depository institutions, the Board proposes to treat credits given to originators of ACH debit transactions as final at 10:00 a.m. local time on the business day following the settlement day.

Discussion

Three issues have been considered in the timing of finality for ACH credit transactions: (1) Current practices and customs; (2) the credit exposure faced by the Federal Reserve and by depository institutions; and (3) the potential that changes in the treatment of finality for ACH transactions may result in shifts in the use of payment mechanisms.

Current Practices—The Reserve Banks' ACH operating circular currently indicates that credit given to receivers of ACH credit transactions is available for use on the settlement day. At the same time, the Reserve Banks reserve the right not to settle for an item after notice of the suspension or closing of the originator or the receiver is received.[1] In addition, the Reserve Banks may cease acting on or settling for a credit item if a Reserve Bank judges that there may not be sufficient funds in the originator's account on the settlement day to cover the item.[2] Based on these provisions, the Reserve Banks have the right to reverse credit transactions until all transactions affecting reserve or clearing accounts have been posted on the settlement day. Further, Reserve Banks are not obligated to notify depository institutions before transactions are reversed although notices would typically be provided the business day following the reversal of transactions.

Other rules and regulations—Regulation CC, Regulation E, and NACHA rules—also influence depository institutions' treatment of ACH credit transactions. The Board's Regulation CC requires depository institutions to make funds received via ACH credit transactions available for withdrawal no later than the opening of business on the business day following the settlement date, but does not preempt existing rules that may require earlier availability (12 CFR 229.10(b)). The Board's Regulation E requires depository institutions to credit consumers' accounts as of the settlement day but does not specify a time of day, and it does not require depository institutions to make funds available for use on the day they are credited (12 CFR 205.10(a)(2) and Official Staff Commentary, Q10–13). NACHA rules, which are incorporated in the Reserve Banks' Uniform ACH Operating Letter, are more stringent and require depository institutions to make funds available for both consumer and corporate payments on the settlement day.[3] Further, NACHA guidelines encourage depository institutions to make funds available to consumers at the opening of business on the settlement day.[4]

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[1] Uniform ACH Operating Letter, paragraphs 24 and 25.

[2] *Ibid.*, paragraph 31.

[3] *Operating rules of the National Automated Clearing House Association*, pages OR 12.

[4] *Operating Guidelines of the National Automated Clearing House Association*, pages OG V–8.

Current Practices—Payroll, pension, and annuity payments are typically processed one or two days before the settlement date, and transaction data are generally provided to receiving institutions before the settlement date. The majority of depository institutions make these payments available to consumers at the opening of business on the settlement day. Larger dollar corporate-to-corporate payments are typically processed at night, with transaction data generally provided to receiving institutions at the opening of business on the settlement date. Funds availability practices vary; funds may be made available to customers on the settlement day, or not until the business day following the settlement day.

Credit Exposure—The credit exposure faced by depository institutions and the Federal Reserve varies inversely based on the finality accorded ACH credit transactions. That is, as Federal Reserve risk is reduced, depository institutions' risk tends to rise.

Under the Reserve Banks' current ACH operating circular, receiving depository institutions are generally exposed to some risk of loss on the settlement day as well as the business day following the settlement day. This risk is due to most institutions' practice of making funds available to their customers on the settlement day even though the Reserve Banks reserve the right to reverse transactions until the time all reserve and clearing accounts have been posted. If payments are reversed and customers do not reimburse their depository institution for the funds they have used, the institution would experience a loss. The Reserve Banks' risk is limited to situations in which it is not discovered that an originator is unable to fund its payments until the day following the settlement day.

While receiving institutions are exposed to the risk of financial loss, the Federal Reserve has taken steps to reduce this risk. The Reserve Banks have implemented precedures to monitor ACH credit transactions originated by "problem" institutions, that is institutions in weak financial positions. In addition the Reserve Banks are implementing procedures that permit them to require problem depository institutions to prefund or pledge collateral to cover the value of credit transactions originated at the time they are deposited for processing.

Furthermore, over 90 percent of all ACH credit transactions are payroll, pension, and annuity payments. The median value of these payments is less than $600, and the depository institutions receiving such payments are generally a highly diverse group. As a result, the potential financial loss faced by institutions receiving small-dollar payments is not substantial.

Changes in the Use of Payment Transactions—It does not appear that there has been a shift of funds transfers to the ACH. Nevertheless, the Board believes that granting finality for ACH credit transactions at the opening of business on the settlement day could lessen the distinction between the ACH and the funds transfer mechanisms and provide incentives for depository institutions to change their payment practices.

Proposed Finality Terms—After review of the current practices, the credit exposure of despository institutions and Reserve Banks, and the potential for shifts in payments transactions, the Board has determined that Federal Reserve policies should provide receivers of ACH credit transactions more certainty regarding the time at which the Reserve Banks grant finality. Accomplishing this objective poses several problems for the Reserve Banks. First, supervisors of depository institutions typically close institutions late in the day. The Reserve Banks, therefore, generally would not be able to begin notifying receiving institutions that an originator is being closed until late in the afternoon. Second, over 20,000 institutions use the ACH mechanism. While all of these institutions ordinarily would not be affected by the closing of one originating institution, a potentially large number of institutions may be affected and a considerable amount of time may be required to notify those institutions that transactions will be reversed.

In order to balance the risks faced by the Reserve Banks and receiving depository institutions, the Board proposes that ACH credit transactions be treated as final payments to the receiver at 6:30 p.m. local time for the receiver on the settlement day. The Reserve Banks will provide receiving institutions the name of the originating institution whose transactions will be reversed by means of a wire notice to institutions with on-line connections to Fedwire before 6:30 p.m. local time. If notice of reversal is not sent to an on-line receiving institution by 6:30 p.m. local time, then the items will be considered to be final. For those institutions that do not have on-line connections to Fedwire, the Reserve Bank will attempt to give notice by telephone by 6:30 p.m. local time. Due to the difficulty of making potentially numerous telephone calls to institutions that have already closed for business for the day, the Board does not believe that it should accept the losses that may accure if notice can not be given by 6:30 p.m. Therefore, the firm 6:30 p.m. finality only applies to on-line institutions. For other institutions, the Reserve Banks will attemp to give notice, but the transactions will not become final if such notice is not given by 6:30 p.m.

The Board requests comments on the proposed 6:30 p.m. finality. The Board also requests comment on whether this notice is useful to the receiving institution without the accompanying transaction data, and how late after 6:30 p.m. this notice may be given and still be useful to the receiving institution. Because timely notice can be best provided through computer connections, the Board requests comments on how the 6:30 p.m. time for notification of reversals should be handled if (1) a Reserve Bank's computer is down; or (2) a receiving institution's computer is down or shut off.

Granting finality at 6:30 p.m. local time exposes the Reserve Banks to some risk of loss. Specifically, losses may be incurred if an originator were closed unexpectedly and had not funded the ACH credit transactions it had originated before it was closed. In addition, losses could be incurred if institutions located in the mid-west and western parts of the country are closed late in the day. For example, if an institution located in California were closed at 5:00 p.m. Pacific Time, the Reserve Banks may be able to notify receiving institutions located in the Mountain and Pacific time zones that transactions originated by the institution would be reversed before 6:30 p.m. local time. Because the time set for finality in the Central and Eastern time zones would have passed before the California institution was closed, the Reserve Banks would not be able to reverse transactions in those regions of the country and would absorb any losses incurred. The Board requests comments on whether it is appropriate for the Federal Reserve to accept such risk of loss and whether commenters believe that a private ACH processor would accept this type of risk.

It is proposed that, after giving a receiving institution notice of the closing of an originator, the Reserve Banks will make available to receiving depository institutions data on the individual transactions that are being reversed. This transaction data will be provided before the opening of business on the business day following the settlement day. In the case of institutions with electronic connections to the Reserve Banks or that pick up their ACH transactions at a Federal Reserve office,

reversed transactions would be made available no later than the close of the night cycle. For institutions whose transactions are delivered via courier or mail, the data would be included with transactions delivered on the next delivery to the institution. In addition to comments on this proposal, the Board also requests that commenters give the latest time that a depository institution could receive reversal transactions and still update its accounts before opening for business on the day following the scheduled settlement date.

As an added protection against potential losses, the Board proposes that the Reserve Banks reserve the right to charge the accounts of originating institutions any time during the settlement day for all ACH credit transactions settling on that day. The Reserve Banks would use this right in situations where there were concerns about an originator's ability to fund ACH credit transactions on the settlement day. This change would reduce the probability that the Reserve Banks would need to reverse transactions that had been delivered to receiving institutions. As a result, it would reduce the risk faced by receivers of ACH credit transactions.

ACH Debit Transactions—The Reserve Banks' ACH operating circular currently indicates that credits given for ACH debit items will not be reversed after the opening of business on the business day following the settlement day. It also indicates that a Reserve Bank may refuse to permit the use of credit given for a debit item if it judges that there may not be sufficient funds in the originator's account to cover chargeback or return of the item.[5] This finality granted by the Reserve Banks does not change the receiver's right of return.[6]

Credit Exposure—The risk faced by institutions originating ACH debit transactions is not affected substantially by the finality granted by the Federal Reserve. In most cases, some portion of debit transactions are returned by receiving insitutions, and the return items may not be received by the originating institution until as many as five days following the settlement day. Most depository institutions have agreements with their customers to charge back such items. Alternatively, they place holds on funds collected through the ACH if they are concerned about the financial stability of their corporate customer.

Because institutions receiving ACH debit transactions are obligated to settle for them by the close of business on the settlement day, the Reserve Banks are able to determine whether debit items have been paid when all transactions have been posted to reserve or clearing accounts. As a result, a Reserve Bank would be able to determine whether payments needed to be reversed in the morning on the business day following the settlement day. To provide greater certainty for depository institutions, the Board proposes to treat credits given to originators of ACH debit transactions as final at 10:00 a.m. local time on the business day following the settlement day. If a receiver of debit transactions fails and the ACH transactions are to be reversed, the Board proposes to advise originators of ACH debit transactions of the name of the receiving institutions whose payments are being reversed by 10:00 a.m. on the business day following the settlement day. Transaction data on these reversals would be made available to institutions with electronic connections to the Reserve Banks or to those that pick up their transactions at a Federal Reserve office no later than the close of the day cycle on the business day following the original settlement date. Reversal transactions would be included on the next delivery to institutions served by couriers or the Postal Service.

Debit Item Adjustments—The NACHA rules permit receiving institutions to return consumer debit transactions up to about 45 days after the settlement date, if a consumer provides notice that such debit entry was, in whole or in part, not authorized by the consumer.[7] Such returns are called debit item adjustments and the Reserve Banks process and settle for them. If the originator of the debit item has failed before the item is submitted for processing, the Reserve Banks currently would be obligated to credit the returning institution and would only have a claim against the failed bank or possibly the failed bank's customer. Processing debit item adjustments, therefore, exposes the Reserve Banks to some risk of loss.

This right of a consumer to obtain credit on the basis that an ACH debit transaction was not authorized differs from a customer's right to obtain credit in the case of a forged or altered check. In the case of a forged check, the payor (receiving) bank bears the risk. In the case of a forged indorsement or an altered check, the customer must prove the alteration of forgery, and the receiving bank must claim against prior banks on the basis of breach of warranty.

The Board does not believe it is reasonable for an intermediary, such as a Reserve Bank, without any knowledge of the transaction to assume the risk of loss. Rather, this risk should be borne by the parties involved. Therefore, the Board proposes that the Reserve Banks grant credit for debit item adjustments only when they can recover credit from the originating depository institution.

Proposals—Based on the preceding discussion, the Board of Governors requests public comment on the following proposals concerning the finality of ACH transactions:

- Granting finality to receivers of ACH credit transactions at 6:30 p.m. local time on the settlement day;
- Treating credits given to originators of ACH debit transactions as final payments at 10:00 a.m. local time on the business day following the settlement date;
- Advising receiving depository institutions with on-line connections to Fedwire that payments are being reversed by the time set for finality of ACH payments;
- Endeavoring to advise off-line institutions by telephone that payments are being reversed;
- Reserving the right to debit the reserve/clearing accounts of institutions originating ACH credit transactions at any time during the settlement day; and
- Granting credit for debit item adjustments only when the Reserve Banks can recover credit from the originating depository institution.

By order of the Board of Governors of the Federal Reserve System, February 23, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-4677 Filed 3-1-89; 8:45 am]

BILLING CODE 6210-01-M

[5] Uniform ACH Operating Letter, paragraph 23.

[6] *Ibid*, paragraph 33.

[7] *Operating Rules of the National Automated Clearing House Association*, page OR 17.

Union Colony Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 11, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Union Colony Bancorp, Greeley, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Northern Investment Company, Fort Collins, Colorado, parent of Northern Bank and Trust, Fort Collins, Colorado.

Board of Governors of the Federal Reserve System, February 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-5055 Filed 3-1-89; 9:50 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisition during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020689 AND 021789

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Robert T. Shaw, c/o I.C.H. Corporation, Integrated Resources, Inc., Integrated Resources, Inc	89-0887	02/06/89
British Telecommunications plc, Affiliated Publications, Inc., McCaw Cellular Communications, Inc	89-0922	02/06/89
British Telecommunications plc, Craig O. McCaw, McCaw Cellular Communications, Inc	89-0923	02/06/89
Capital Cities/ABC, Inc., Satellite Music Network, Inc., Satelitte Music Network, Inc	89-0932	02/06/89
Golder, Thoma, Cressey Fund III Limited Partnership, Donald R. Brattain, Barefoot Grass Lawn Service, Inc	89-0965	02/06/89
Ford Motor Company, Meritor Savings Bank, Meritor Credit Corporation	89-0977	02/06/89
Kenneth R. Thomson, Keefe, Bruyette & Woods, Inc., Keefe BankWatch	89-0980	02/06/89
The Chase Manhattan Corporation, Meritor Savings Bank, Meritor Savings, FA	89-0998	02/06/89
Georgia Gulf Corporation, Co-Plas, Inc. Co-Plas Inc	89-0928	02/08/89
Castle Coal & Oil Co., John CHR. M.A.M. Deuss, Atlantic Fuels Marketig Corporation	89-0855	02/09/89
The Fluorocarbon Company, TI Group plc, Bunnell Plastics, Inc	89-0908	02/09/89
Lomas Financial Corporation, Union of Arkansas Corp., Union National Bank of Arkansas and Union National Bank	89-0926	02/10/89
Summit Resources, Inc., Stoneridge Resources, Inc., Stoneridge Resources, Inc	89-0939	02/10/89
Francesco Galesi, Telesphere International, Inc., Telesphere International, Inc	89-1003	02/10/89
The Honorable Daniel J. Terra, First Illinois Corporation, Mercury Finance Company	89-1004	02/10/89
Gulf + Western Inc., Advanta Corp., Colonial National Bank USA	89-1005	02/10/89
General Motors Corporation, Ford Motor Company, First Nationwide Bank, a Federal Savings Bank	89-1024	02/10/89
Jeffry M. Picower, Fidata Corporation, Fidata Corporation	89-1025	02/10/89
Exxon Corporation, Texaco Inc., Alberta Ltd., Texaco Canada, Inc	89-0951	02/13/89
Exxon Corporation, Texaco Inc., Texaco Canada Inc	89-0953	02/13/89
Roy E. Disney and Patricia A. Disney, Sound Warehouse, Inc., Sound Warehouse, Inc	89-0968	02/13/89
Berkshire Hathaway Inc., Isadore Friedman, Borsheim Jewelry Company, Inc	89-0975	02/13/89
Thomas C. Foley, West Point-Pepperell, Inc., assets of Stevens Aviation & Stevens Aviation Ohio	89-0995	02/13/89
Sheldon Gross, The Allen Group Inc., National Rubber Company Ltd. and National Rubber Co	89-1008	02/13/89
Alexander Proudfoot PLC, Philip Crosby Associates, Inc., Philip Crosby Associates, Inc	89-1020	02/13/89
International Semi-Tech Micro-electronics, Inc., SSMC Inc., SSMC Inc	89-1023	02/13/89
Alexander Proudfoot PLC, Philip Crosby Associates, Inc., Philip Crosby Associates, Inc	89-1026	02/13/89
Metex Corporation, General Development Corporation, General Development Corporation	89-0898	02/14/89
Attilio F. Petrocelli, General Development Corporation, General Development Corporation	89-0899	02/14/89
Pearl H. Hack, General Development Corporation, General Development Corporation	89-0900	02/14/89
Big B Inc., Imasco Limited, Reed Drug Company	89-0917	02/14/89
Societe Nationale Elf Acquitaine, Thomas D. Schmoker, Quality Plus Essar Corporation	89-0935	02/14/89
Exxon Corporation, a New Jersey Corporation, Oil Holding, Inc., Oil Holding, Inc	89-0954	02/14/89
Emerson Electric Co., W.W. Grainger, Inc., W.W. Grainger, Inc	89-0964	02/14/89
Milton Petrie, Deb Shops, Inc., Deb Shops, Inc	89-0971	02/14/89
Kane-Miller Corp., Postal Instant Press, Inc., Postal Instant Press, Inc	89-0985	02/14/89
George T. Votis, The 1964 Simmons Trust, Keystone Consolidated Industries, Inc	89-0930	02/15/89
Canada Malting Co., Ltd., Penwest, Ltd., Penford Products Co	89-0940	02/15/89
Acadia Partners, L. P., Dennis Sokol, Medserv Corporation	89-0992	02/15/89
Illinois Tool Works Inc., Ransburg Corporation, Ransburg Corporation	89-0993	02/15/89
Illinois Tool Works Inc., Ransburg Corporation, Ransburg Corporation	89-0999	02/15/89
Value Equity Associates I, L.P., XTRA Corporation, XTRA Corporation	89-0920	02/16/89
AMR Corporation, Texas Air Corporation, Britt Airways, Inc	89-0649	02/17/89
Stephen Adams, Sterling Recreation Organization Co., Sterling Recreation Organization Co	89-0886	02/17/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020689 AND 021789—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Meadowdale Foods, Inc., Mr. Erlvan Karl Haub, The Great Atlantic & Pacific Tea Company, Inc	89-0970	02/17/89
Harken Energy Corporation, Crystal Oil Company, Crystal Oil Company	89-1015	02/17/89
Palmer Communications, Incorporated, Vanguard Cellular Systems, Inc., Macon Cellular Telephone Corp	89-1040	02/17/89
James Sowell, Mason Best Company, Plexus Acquisition Company, Inc. (dba Posner Bus. Form)	89-1041	02/17/89
Embassy Pacific Partners Limited Partnership, Holiday Corporation, Holiday Corporation	89-1058	02/17/89
The Berkshire Fund, A Limited Partnership, Stephen G. Dent, DCI Acquisition Corp	89-1059	02/17/89
Elders IXL Limited, North Broken Hill Peko Limited, Simsmetal USA Corporation	89-1060	02/17/89
Motels of America Inc., Earl F. Slick, Turnpike Properties, Inc. (Cricket Inns)	89-1067	02/17/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-4842 Filed 3-1-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974; Matching Program—Medicare Part A Beneficiary Records/VA Patient Records

AGENCY: Department of Health and Human Services.

ACTION: Notification of matching program—Medicare Part A beneficiary records/VA patient records.

SUMMARY: The Department of Health and Human Services (HHS) is providing notice that the Office of Inspector General (OIG) intends to conduct a match of HHS Medicare Part A Beneficiary records against Veterans Administration (VA) patient treatment records. A matching report is set forth below:

DATE: The match will begin in March 1989.

ADDRESS: Send all Comments to the Financial and Administrative Management Staff, Administrative Office, OIG, HHS, Room 5246 Cohen Building, 330 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Diane Datcher, Financial and Administrative Management Staff, Administrative Office, OIG, HHS, Room 5246 Cohen Building, 330 Independence Avenue SW., Washington, DC 20201.

SUPPLEMENTARY INFORMATION: The HHS OIG, in cooperation with the VA Office of Inspector General, is initiating a computer matching program to identify improper duplicate payments made by Medicare intermediaries where VA was responsible for the payment. The services to be reviewed are services authorized by the VA to be performed in non-VA hospitals to veterans who are also eligible under Part A of Medicare. A duplicate payment could result if a hospital were to bill both the VA and the Medicare program for the same services. The existence of duplicate payments has been detected in past VA audits, but the full extent of such duplicate payments has not been determined. The purpose of this computer matching program is to identify all such duplicate payments. Set forth below is the information required by paragraph 5.f.1. of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been furnished to both Houses of Congress and the Office of Management and Budget.

Date: February 17, 1989.

Richard P. Kusserow,

Inspector General.

Report of Matching Program: Medicare Part A Beneficary Records/VA Patient Records

a. *Authority:* Pub. L. 94-505.

b. *Program Description:* The Department of Health and Human Services Office of Inspector General plans to conduct a match of Medicare payment files of Part A beneficiaries, furnished by the Health Care Financing Administration (HCFA), against files of the Veterans Administration (VA) setting out payments for authorized services to veterans in non-VA hospitals. The match will identify duplicate payments for the same services. A sample of duplicate payments will be verified with the appropriate Medicare intermediaries and hospitals to validate the accuracy of the match. The remaining raw hits will be provided to HCFA for verification and resolution.

c. *Records to be Matched:* Records on Medicare Part A beneficiaries from the Intermediary Medicare Claims system (90-70-0503), 53 FR 52801 (Dec. 29, 1968) will be matched against the following VA records systems:

1. Individuals Submitting Invoices-Vouchers for Payment Systems (13VA047), Federal Register Privacy Act Issuances, 1986 Compilation, Vol. 5, p. 763.

2. Patient Medical Records System (24VA136), Federal Register Privacy Act Issuances, 1986 Compilation, Vol. 5, p. 771.

d. *Period of Match:* The match will begin in March 1989 and will be completed within 5 months.

e. *Safeguards:* Records used in this match will be maintained under strict security. Access to the computer files and printed information will be restricted to only those persons having a "need to know" for the purposes of additional review or resolution. The records being matched will be kept in locked file cabinets under control of the Office of Inspector General, or in secured Government computer facilities. We will return all of the VA computer source tapes to the VA upon completion of the match. Computer tapes are protected by the use of passwords to prohibit unauthorized access. All computer files are safeguarded in accordance with the provisions of the National Bureau of Standards Federal Information Processing Standards 41 and HHS ADP Systems Security Manual, Part 6, "ADP Systems Security".

f. *Retention and Disposition of Records:* Only those records produced in the match which meet predetermined criteria will be maintained. All records maintained will be destroyed within 6 months except those which are necessary to the resolution of duplicate payments identified by the matching program. The date will be verified to insure accuracy prior to any dissemination of records on individuals.

[FR Doc. 89-4751 Filed 3-1-89; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

[Announcement Number 909]

Sexually Transmitted Diseases Research and Demonstrations

Introduction

The Centers for Disease Control (CDC) announces that grant applications are to be accepted for Sexually Transmitted Diseases (STD) Research and Demonstrations.

Authority

This program is authorized under section 318(b) of the Public Health Service Act (42 U.S.C. 247c(b)), as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b, Subparts A and F.

Eligible Applicants

Eligible applicants are the official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Marianna Islands, Palau, and the Virgin Islands, and any other public or nonprofit private entity. Thus, universities, colleges, research institutions, and hospitals are eligible to apply. In addition, in order to ensure statistically significant results, applicants applying for assistance in the area of syphilis control must be those which reported case rates of primary and secondary syphilis of at least 20 per 100,000 population for 1988.

Availability of funds

Approximately $800,000 is available in Fiscal Year 1989 to fund approximately 2 to 4 studies. It is expected that the average award will be $200,000, ranging from $100,000 to $300,000. Awards are expected to begin on or about July 1, 1989, for a 12 month budget period within a project period of 1 to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this grant program is to develop, improve, and evaluate methods for the prevention and control of STD through demonstrations and applied research. Applied research, as used in the context of this announcement, means the process of developing and evaluating operational approaches and solutions to practical STD control problems by formulating appropriate models and hypotheses and testing them in the field.

Program Requirements

Applications adressing the areas listed below will be considered for funding in Fiscal Year 1989:

A. *Syphilis Control, Behavioral Aspects:* Develop, implement, and evaluate strategies for innovative and cost effective interventions for infections syphilis. Applicants should work with community groups, especially those that serve and represent racial and ethnic minority populations, to conduct in-depth studies of the dynamics of sexual behavior in association with drug use.

B. *Primary Prevention:* Study and evaluate the prevalence of and attitudes toward condom use and develop and implement a disease intervention plan with condom use as the primary intervention strategy. Studies should include populations at highest risk of acquiring STD. Applicants should define from their own STD statistics the groups at highest risk of acquiring STD. Evaluation should concentrate on high risk groups. Incidence of disease should be one of the outcome measures of evaluation.

Evaluation Criteria

A. Competing application will be reviewed and evaluated by an ad hoc CDC-convened committee according to the following criteria:

1. The applicant's ability to assess the potential impact of long- and short-term objectives as evidenced by decreased reported incidence of sexually transmitted diseases.

2. The degree to which long- and short-term objectives are specific, measurable, and time-phased.

3. The quality of the plan of operation for conducting and monitoring activities designed to meet project objectives.

4. The extent to which the proposed project includes methods that are innovative and do not replicate prior or currently ongoing research.

5. The quality of the evaluation plan which specifies the methods and instruments of measurements to be used.

6. The extent to which qualified and experienced personnel are available, based on previous involvement with projects related to STD prevention and control.

7. The effectiveness of the applicant's collaboration with local or State STD control programs, hospitals, medical schools, laboratories, and any other agencies where joint liaison efforts would enhance the success of the project.

8. The appropriateness and feasibility of the project and the extent to which results may be transferred to other areas.

Consideration will also be given to the extent to which the budget request is reasonable and consistent with the intended use of grant funds.

B. Non-competing applications within an approved project period will be evaluated on satisfactory progress in meeting program objectives as determined by progress reports and the quality of the future plans. Awards will be made based on the availability of funds.

Executive Order 12372

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.978.

Application Submission and Deadline

The original and two copies of the application (Form PHS 5161–1) must be submitted to Nancy Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 300, Atlanta, GA 30305, on or before April 28, 1989.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier of U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late Applications:* Applications which do not meet the criteria in A.1. or 2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and application package may be obtained from Marsha Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE,

Room 300, Atlanta, GA 30305, (404) 842-6640 or FTS 236-6640.

Please refer to Announcement Number 909, "PROJECT GRANTS FOR SEXUALLY TRANSMITTED DISEASE RESEARCH AND DEMONSTRATIONS" when requesting information and submitting any application on the Request For Assistance. Technical assistance may be obtained from Alfred A Harry, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-2584 or FTS 236-2584.

Dated: February 23, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-4782 Filed 3-1-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89N-0069]

Drug Export; PROLEUKIN® for Injection 1 MG

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cetus Corp. has filed an application requesting approval for the export of the biological product PROLEUKIN® for Injection 1 mg to Belgium, Denmark, Federal Republic of Germany, Finland, France, Ireland, Italy, The Netherlands, Norway, Spain, Sweden, and The United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cetus Corp., 1400 53d St., Emeryille, CA 94608, has filed an application requesting approval for the export of the biological product PROLEUKIN® for Injection 1 mg to Belgium, Denmark, Federal Republic of Germany, Finland, France, Ireland, Italy, The Netherlands, Norway, Spain, Sweden, and The United Kingdom. The product PROLEUKIN® for Injection 1 mg is intended for use in the treatment of metastic renal cell carcinoma. The application was received and filed in the Center for Biologics Evaluation and Research on February 3, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 13, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: February 16, 1989.

Madge L. Crouch,

Deputy Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 89-4868 Filed 3-1-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Office of the Assistant Secretary for Health; National Center for Health Services Research and Health Care Technology Assessment; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of patient criteria for electrostimulation of salivary production in the treatment of xerostomia secondary to Sjogren's Syndrome. In this procedure an electrostimulation device (salivation electrostimulator) is used to stimulate salivary production from existing glandular tissue.

This assessment seeks to answer the following questions: (1) Is electrostimulation for salivary production widely accepted as a safe and clinically effective method in the treatment of xerostomia secondary to Sjogren's Syndrome? (2) What patient selection criteria would identify xerostomic patients that would benefit from this procedure? (3) Can specific subgroups of patients be identified? (4) Can guidelines be developed to specify which types of xerostomic patients with which conditions and at what points in their clinical evaluation and/or management would benefit from this type of procedure? If so, please suggest a set of guidelines. (5) At what level of salivary deficiency is therapeutic intervention warranted? (6) If the amount of salivation induced by electrostimulation varies from patient to patient how is successful treatment determined? (7) What would be the cost associated with such treatment, and (8) Are there any disadvantages or limitations associated with the use of this procedure? This assessment also seeks to determine if one procedure for xerostomia is more appropriate for patients with a specific clinical condition as opposed to another.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this

technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit, as well as on clinical acceptability and the effectiveness of this technology and extent of use are also being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than May 1, 1989 or within 90 days from the date of publication of this notice.

Written material should be submitted to: Mr. Martin Erlichman, Health Science Analyst, Office of Health Technology Assessment, 5600 Fishers Lane, Room 18A–27, Rockville, MD 20857, 301–443–4990.

Date: February 1, 1989.

Donald Goldstone,

Acting Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 89–4923 Filed 3–1–89; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Road Closure

AGENCY: Bureau of Land Management.

ACTION: Road closure and restrictions.

SUMMARY: Pursuant to 43 CFR 8364.1(1) the following Bureau of Land Management (BLM) roads in Saguache County will be temporarily closed to protect roads and fragile environment during the spring thaw: Poncha Loop Road, Clover Creek Road, Dorsey Creek Road, Noland Gulch Loop Road, Clayton Cone, Findley Gulch, Poison-Dry Loop, Ford Creek, Cabin Draw Loop, Ward Gulch, Antelope Creek, Trickle Mountain, Big Dry Gulch, Rabbit Mesa, Holey Rock, Lightning Pass, Taylor Canyon, Spanish Creek and Squaw Creek Roads.

BLM roads to be closed in Conejos county include the following: Cumbres-Toltec Road, Bighorn Creek, Los Mesitas, Poso Loop, Ra Jadero, Whippoorwill, Capulin Peak and Cinder Pit Roads.

Approximate road closure dates are March 1, 1989 to May 31, 1989. Roads that are dry prior to May 31, 1989, may be opened for public use. Pursuant to 43 CFR 8364.1(4), the following persons are exempted from this order:

(1) Persons with a permit specifically authorizing the otherwise prohibited act.

(2) Any Federal, State, or local officer, or member of an organized rescue or fire fighting force in the performance of an official duty.

FOR FURTHER INFORMATION CONTACT: Dennis Zachman, Area Manager, (719) 589–4975, 1921 State Avenue, Alamosa, Colorado.

Donnie R. Sparks,

District Manager.

[FR Doc. 89–4813 Filed 3–1–89; 8:45 am]

BILLING CODE 4310–JB–M

[ID–010–09–4410–08]

Land Use Plan Amendment; Jarbidge RMP and Twin Falls MFP; Boise and Burley Districts, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of action.

SUMMARY: The Idaho State Director for the Bureau of Land Management has approved the release of a proposed land use plan amendment that involves (1) designation of the Salmon Falls Creek Canyon Area of Critical Environmental Concern (ACEC) in both the Twin Falls Management Framework Plan (MFP) and the Jarbidge Resource Management Plan (RMP), and (2) providing for additional structural range improvement projects in the Jarbidge RMP.

DATE: The amendment is subject to a 30-day protest period beginning Thursday, March 2, 1989, and ending April 3, 1989.

ADDRESS: Any protests to the amendment must be submitted in writing to: Director (760), Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240. Protests must comply with the requirements of 43 CFR 1610.5–2 and be filed prior to the end of the protest period as stated above.

FOR FURTHER INFORMATION CONTACT: Gary Carson, Jarbidge Area Manager, or Terry Costello, Chief, Planning and Environmental Assistance Staff, at 3948 Development Avenue, Boise, Idaho 83705, or call (208) 334–1582.

SUPPLEMENTARY INFORMATION: Approval of the proposed land use plan amendment will constitute formal designation of 30 miles of Salmon Falls Creek Canyon as an ACEC, which will ensure continued protection of the Canyon's unique natural and scenic values. Also, based upon information obtained after the Jarbidge RMP was completed, the amendment will provide for construction of fences, pipelines, and water developments that are necessary to meet the land use objectives in the RMP. No changes are proposed in the level of land treatments identified in the RMP. The miles of fence to be constructed will be increased from 166 to 306, the miles of water pipelines from 131 to 444, and the number of water developments (wells, reservoirs, and springs) from 5 to 19. Analysis of the proposed amendment indicated that these range improvements are needed to improve soil, vegetation, and watershed conditions; provide adequate forage for identified numbers of livestock, wildlife, and wild horses; improve lands in poor ecological condition; maintain existing vegetative improvements; and manage big game habitat to support the populations specified in the RMP.

Date: February 21, 1989.

J. David Brunner,

Boise District Manager.

[FR Doc. 89–4479 Filed 3–1–89; 8:45 am]

BILLING CODE 4310–GG–M

[OR–050–4320–02:GP9–141]

Oregon; Prineville District Grazing Advisory Board Meeting, Prineville, Oregon

February 23, 1989.

Notice is hereby given in accordance with Pub. L. 91–463 of a meeting of the Prineville District Grazing Advisory Board to be held April 13, 1989.

The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management office located at 185 East 4th Street, Prineville, Oregon 97754.

The agenda will include the following items:

1. Election of officers.
2. Orientation to District Programs and Organization.
3. Grazing decisions from Brothers-LaPine Resource Management Planning Process.
4. Allotment management planning status.
5. Grazing Evaluations/Decisions status.
6. Review of Geographic Emphasis Areas' major project, implementation program.
7. Disposition of other proposed range improvements.
8. Disposition of County Advisory Board Funds.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the Board is requested to contact the District Manager at the above address on or prior to April 7, 1989.

Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

Dated: February 23, 1989.

Donald L. Smith,

Acting District Manager.

[FR Doc. 89-4816 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-33-M

[AZ-040-09-4320-02]

Safford District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, that a meeting of the Safford District Grazing Advisory Board will be held.

DATE: Wednesday, April 5, 1989; 9:00 a.m.

ADDRESS: Safford District BLM Office, 425 E. 4th St., Safford, AZ 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463. The agenda for the meeting will include:

1. Field tour to Bonita Creek to discuss Riparian issues.
2. Discussion of Game Management Practices in Hunt Unit 28.
3. BLM managment Update.
4. Business from the floor.

The meeting will be open to the public. Board members will meet at the BLM Office, 425 E. 4th St., Safford, AZ 85546 at 9:00 a.m. From there they will depart via BLM-provided vehicles for a tour of Bonita Creek, and destination for the Board meeting. Members of the public may accompany the tour, and attend the meeting, but must provide their own transportation. It is expected the Board members will return to Safford by 4:00 p.m.

Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, AZ 85546, by 4:15 p.m., Tuesday, April 4, 1989.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Date: February 24, 1989.

Ray A. Brady,

District Manager.

[FR Doc. 89-4810 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-09-4212-18; N-48281, N-48857, N-48858, N-48859]

Issuance of Land Exchange Patents, Interim Conveyance and Lease of Public Lands; Nevada

February 16, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice identifies, in a general manner, Federal and non-Federal lands involved in a recently completed exchange transaction. All minerals were exchanged.

FOR FURTHER INFORMATION CONTACT: Marla B. Bohl, Chief, Branch of Lands and Minerals Operations, Nevada State Office, Bureau of Land Management, P.O. Box 12000, 850 Harvard Way, Reno, NV 89520, (720) 784-5703.

SUPPLEMENTARY INFORMATION: The United States issued Patent Nos. 27-88-0012 and 27-88-0013, Interim Conveyance 001 and a lease pursuant to the Nevada-Florida Land Exchange Authorization Act of 1988. Patent No. 27-88-0012 was for the following described land in Mineral County, Nevada:

Mount Diablo Meridian, Nevada

T. 6 N., R. 33 E.
- Secs. 10-13, all;
- Sec. 14, E½;
- Sec. 15, W½;
- Sec. 21, all;
- Sec. 22, W½, S½SE¼;
- Sec. 23, E½, S½SW¼;
- Sec. 24, E½, W½NW¼, NE¼NW¼, N½ SE¼NW¼, SE¼SE¼NW¼, SW¼;
- Sec. 25, all;
- Sec. 26, NE¼, W½, NE¼SE¼, W½SE¼;
- Sec. 27, all;
- Sec. 34, all;
- Sec. 35, NE¼NE¼, W½, W½SE¼, SE¼ SE¼;
- Sec. 36, all.

Containing 8,910 acres

Patent No. 27-88-0012 also conveyed the mineral interest underlying the following described land:

T. 6 N., R. 33 E.
- Sec. 14, W½;
- Sec. 15, E½;
- Sec. 22, NE¼, N½SE¼;
- Sec. 23, NW¼, N½SW¼;
- Sec. 24, SW¼SE¼NW¼.

Containing 1,130 acres.

Patent No. 27-88-0013, Interim Conveyance 001, and the lease were for lands in Lincoln and Clark Counties. The land generally be described as a parcel situated east of U.S. Highway 93 and north of State Highway 168. The townships involved are described as follows:

Mount Diablo Meridian, Nevada

T. 11 S., R. 63 E.
T. 12 S., R. 63 E.
T. 13 S., R. 63 E.
T. 12 S., R. 64 E.
T. 13 S., R. 64 E.

The total acreage conveyed by Patent 27-88-0013 and Interim Conveyance 001 totals 29,055.57 acres. The lease included approximately 13,767 acres. Precise legal descriptions can be ascertained from the records at the Bureau of Land Management at the above address.

The United States aquired land in Dade County, Florida in exchange for the above-described land. The exchange was made for the benefit of the U.S. Fish and Wildlife Service and its programs. A more detailed description of the land acquired by the United States is available in the records of the Bureau of Land Management at the above address.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-4809 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Land Management

[NV-930-09-4212-11; N-48049]

Realty Action in Nevada

ACTION: Notice of Realty Action—Direct sale of public lands for waste water disposal ponds to Humboldt County for the Community of Orovada, Nevada. This notice terminates the segregative effect on the public lands involved in the public lands sale application N-48049.

SUMMARY: This notice supersedes the Federal Register notice published December 30, 1988 (53 FR 53075). The Bureau of Land Management hereby terminates the segregative effect as it pertains to the following described lands:

Mount Diablo Meridian, Nevada

T. 43 N., R. 37 E., Sec. 34, SE¼NE¼.

Analysis of the proposed site and conflicts over the type of use caused the amendment of application N-48049. The above described parcel of land is hereby opened to the public land laws including the mining laws upon publication of this notice in the **Federal Register.**

Notice is hereby given that pursuant to the Act of October 21, 1976, Pub. L.

94–579, The Federal Land Policy and Management Act, section 203, the Bureau of Land Management will sell to Humboldt County a parcel of public land for the construction and operation of waste water disposal ponds to serve the community of Orovada. The parcel will be located in the following new location:

Mount Diablo Meridian, Nevada

T. 43 N., R. 37 E., Sec. 34, NE¼SW¼
40 acres.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 705 East 4th Street, Winnemucca, NV 89445, (702) 623–3676.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** shall segregate the public lands to the extent that the land will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application shall not be considered as filed and shall be returned to the applicant. This segregative effect of the notice of realty action shall terminate upon issuance of the patent or other document of conveyance to Humboldt County or publication of the notice of termination in the **Federal Register** or 270 days from the date of publication of this notice, whichever occurs first.

Dated: February 22, 1989.

Ronald Wenker,

District Manager, Winnemucca.

[FR Doc. 89–4811 Filed 3–1–89; 8:45 am]

BILLING CODE 4310–HC–M

[NM–030–4410–08]

Availability of Resource Management Plan; Socorro Resource Area, NM

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of availability.

SUMMARY: On January 29, 1989, Larry L. Woodard, New Mexico State Director, BLM, signed the Record of Decision (ROD) for the Socorro Resource Management Plan (RMP). This ROD documents the approval of the plan described in the Socorro Proposed RMP/Final Enviromental Impact Statement (EIS) of September 1988, on the land-use plan for the Socorro Resource Area (SRA).

This RMP will provide the framework to guide management decisions during the next 10 to 20 years on the SRA's 1.5 million surface acres of public land and 2.3 million acres of Federal subsurface.

The goal of this RMP is to provide for a combination of resource uses that will protect important environmental values and sensitive resources and at the same time allow development of resources which produce commercial goods and services.

The RMP also describes how the 7 key resource issues and 2 management concerns that were identified with public involvement early in the planning process will be resolved. These issues are: (1) Land Ownership Adjustments; (2) Vegetative Uses; (3) Off-Road Vehicle (ORV) Use; (4) Access; (5) Special Management Areas; (6) Wild Horse Management; and (7) Coal Leasing Suitability Assessment. The management concerns are: Fluid Mineral Leasing and Right-of-Way Exclusion and Avoidance Areas.

The Bureau has completed decisions to designate 6 Areas of Critical Environmental Concern (ACEC's) as follows:

	Acres
Ladron Mountains	62,460
Agua Fria	10,770
Sawtooth	120
Horse Mountain	7,720
Tinajas	3,520
San Pedro	1,200

The Bureau has also designated about 1.5 million acres of public land in Socorro and Catron Counties in central New Mexico as "open," "limited," or "closed" ORV use. Designations are the result of land-use planning decisions made in the RMP. Of the BLM-administered surface acres in the SRA, approximately 785,010 acres are "open"; 668,200 acres are "limited" to existing roads and trails (yearlong); 67,400 acres are "seasonally limited" to existing roads and trails; and 30 miles of trails are "closed" to ORV use.

The authority for the ORV designations is derived from Executive Orders No. 11644 and 11989, and the regulations contained in 43 CFR, Part 8340.

Open Designations

Of the "open" category, 1,170 acres east of Socorro, New Mexico, are designated as intensive use areas for organized or competitive events. The remaining 783,840 acres are designated "open" for other ORV use.

Limited to Existing Roads and Trails (Yearlong) Designations

Approximately 668,200 acres are designated "limited" to existing roads and trails. Included in this ORV designation are 12 Wilderness Study Areas (WSA's) and 23 Special Management Areas (SMA's) totalling 582,410 acres. Additionally 6 ACEC's, totalling 85,790 acres, are also designated "limited" to existing roads and trails.

Limited to Existing Roads and Trails (Seasonally) Designations

Approximately 67,400 acres are "seasonally limited" to existing roads and trails from November through March. These areas are located adjacent to the Eagle Peak and Mesita Blanca WSA in northwestern Catron County.

Closed Designations

Approximately 36 miles of trails are closed. These include Sierra Ladron ACEC, 18 miles; Tinajas ACEC, 2 miles; Horse Mountain ACEC, 2 miles; Antelope WSA, 4 miles; Continental Divide WSA, 9 miles; Playa Pueblos, 1 mile; and Teypama Site, 17 acres. Motorized access will be allowed in closed areas by administrative personnel and permittees who have specifically requested use consistent with other privileges.

ADDRESS: Copies of the Draft RMP/EIS, the Proposed RMP/FEIS, and the ROD are available from: Area Manager, Socorro Resource Area, USDI—Bureau of Land Management, 198 Neel Ave. NW., Socorro, NM 87801.

FOR FURTHER INFORMATION CONTACT: Harlen Smith, Area Manager, Socorro Resource Area, at the address above; telephone (505) 835–0412.

Monte G. Jordan,

Associate State Director.

Dated: February 24, 1989.

[FR Doc. 89–4781 Filed 3–1–89; 8:45 am]

BILLING CODE 4310–FB–M

[ES–940–09–4520–13; (ES–039972, Group 20]

Filing of Plat of Dependent Resurvey and Subdivision of Section 19; Michigan

February 24, 1989.

1. The plat of the dependent resurvey of a portion of the south boundary of Township 52 North, Range 32 West, a portion of the south (Fifth Correction Line), east and west boundaries, a portion of the subdivisional lines and the survey of the subdivision of section 19, Township 51 North, Range 32 West, Michigan Meridian, Michigan will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on April 10, 1989.

2. The dependent resurvey was made upon the request submitted by the

Minneapolis Area Office, Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m. April 10, 1989.

4. Copies of the plat will be made available upon request and prepayment of the production fee of $4.00 per copy.

Corwyn J. Rodine,

Acting Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 89-4794 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-GJ-M

[NV-930-09-4212-22]

Filing of Plats of Survey; Nevada

February 17, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of a Plat of Survey in Nevada.

EFFECTIVE DATE: Filing was effective at 10:00 a.m. on February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-784-5484.

SUPPLEMENTARY INFORMATION: The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on February 1, 1989.

Mount Diablo Meridian, Nevada

T. 11N., R. 21 E.—Dependent Resurvey

The plat was accepted on July 5, 1984. The dependent resurvey was executed to meet certain administrative needs of the BLM. The above-listed plat is now the basic record for describing the lands for all authorized purposes. The plat will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plat and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-4812 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5357, Block 628, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on February 21, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OSC Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: February 23, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-4814 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; McMoRan Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that McMoRan Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1088, Block 89, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on February 22, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge,

Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: February 2, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-4815 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Operations: Official Protraction Diagrams; Availability

AGENCY: Minerals Management Service, Interior.

ACTION: Publication of revised Outer Continental Shelf Official Protraction Diagrams.

SUMMARY: Notice is hereby given that effective with this publication, the following OCS Official Protraction Diagrams, last revised on November 8, 1988, are on file and available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, these Official Protraction Diagrams are the basic record for the description of mineral and oil and gas lease sales in the geographic areas they represent.

Description	Revision	Latest revision date
Mobile, NH 16-4.	Federal/State boundary and 8(g) zone.	Nov. 8, 1988.
Pensacola, NH 16-5.	....do	Do.

ADDRESS: Copies of these Official Protraction Diagrams may be purchased for $2.00 each from Public Information Unit (OPS-3-4), Minerals Management Service, Gulf of Mexico OCS Regional Office, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394 (504) 736-2519.

Technical comments or questions pertaining to these maps should be directed to Office of Leasing and Environment, Supervisor, Sales and Support Unit (504) 736-2761.

Dated: February 22, 1989.

J. Rogers Pearcy,

Regional Director, Minerals Management Service, Gulf of Mexico OCS Region.

[FR Doc. 89-4800 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Federal Hall National Memorial, NY; Emergency Closure

In accordance with Title 16 U.S.C. 1, 3, 9a, 460 1-6a(a), 462 (k) 431, note and 463 note, and consistent with 36 CFR 1.5, the National Park Service hereby gives public notice that due to safety concerns, the superintendent of the Manhattan Sites Unit of the National Park System closed Federal Hall National Memorial to general public use on March 1, 1989. The Memorial will be reopened on April 30 or shortly before that date if the Superintendent determines that public safety, due to extensive construction and rehabilitation, is no longer at risk.

Federal Hall National Memorial is located at 26 Wall Street, New York City, NY.

Steven H. Lewis,

Deputy Regional Director.

[FR Doc. 89-4920 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-70-M

Chattahoochee River National Recreation Area; Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Chattahoochee River National Recreation Area Advisory Commission will be held at 2:00 p.m. at the following location and date.

DATE: March 16, 1989.

ADDRESS: The Chattahoochee River National Recreation Area, Headquarters Building, at the Island Ford Unit in North Fulton County.

FOR FURTHER INFORMATION CONTACT: Warren D. Beach, Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Dunwoody, Georgia 30350. Telephone (404) 394-7912.

SUPPLEMENTARY INFORMATION: The purpose of the Chattahoochee River National Recreation Area Advisory Commission is to consult and advise the Secretary of the Interior regarding the management and operation of the area, protection of resources within the area, and the priority of lands to be acquired within the area. The members of the Advisory Commission are as follows:

Mr. J. Neal Shepard, Jr.
Mr. Robert A. Meadows
Mrs. Paula S. Hovater
Mr. Benjamin H. West
Mr. Howard D. Zeller
Mr. Larry B. Thompson
Mrs. Lillian Webb
Mr. David O. Eldridge
Mr. Robert Kerr
Mr. H. Edwin Schultz
Ms. Evelyn H. Hopkins
Mr. Michael Bennett
Mr. James O. Watson, Jr.

The meeting will be a forum to share information on the Chattahoochee River National Recreation Area and discuss current issues.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Date: February 17, 1989.

C. W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 89-4921 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a request for the extension of approval for questionnaires to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332-209, Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Summary of Proposals:

(1) Number of forms submitted: two.

(2) Title of form: Annual Surveys Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize—Questionnaires for U.S. Producers and Importers.

(3) Type of request: extension.

(4) Frequency of use: annual, through 1989.

(5) Description of respondents: firms which produce or import carbon and alloy steel products.

(6) Estimated annual number of respondents: 305.

(7) Estimated total number of hours to complete the forms: 6,900.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Mark Paulson (USITC, tel. no. (202) 252-1432). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202) 395-7340. Copies of any comments should be provided to Charles Ervin (U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: February 23, 1989.

[FR Doc. 89-4779 Filed 3-1-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-298 (Preliminary)]

Fresh, Chilled, or Frozen Pork From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Canada of fresh, chilled, or frozen pork, provided for in subheadings 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Canada.

Background

On January 5, 1989, a petition was filed with the Commission and the Department of Commerce by the National Pork Producers Council (NPPC), Des Moines, IA, and others, alleging that an industry in the United States is materially injured by reason of subsidized imports of fresh, chilled, or frozen pork from Canada. Accordingly, effective January 5, 1989, the Commission instituted preliminary countervailing duty investigation No. 701-TA-298 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 11, 1989 (54 FR 1014). The conference was held in Washington, DC, on January 26, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 21, 1989. The views of the Commission are contained in USITC Publication 2158 (February 1989), entitled "Fresh, Chilled, or Frozen Pork from Canada: Determination of the Commission in Investigation No. 701-TA-298 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: February 22, 1989.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-4778 Filed 3-1-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-270]

The Effects of the Steel Voluntary Restraint Agreements on U.S. Steel Consuming Industries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, announcement of public hearing, and request for written submissions.

EFFECTIVE DATE: February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Gerald Berg (202) 252-1233, Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background: Following receipt of a letter on February 13, 1989, from the Chairman of the Subcommittee on Trade of the House Committee on Ways and Means, the Commission instituted investigation No. 332-270 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of studying and reporting on the effects of the steel voluntary restraint agreements (VRAs) on U.S. steel consuming industries.

As requested by the Subcommittee, the Commission in its report will seek to provide estimates of the effects of these VRAs on exports, imports, and domestic sales of major steel consuming industries for each of the years 1985 through 1988. The Commission will also provide analysis of the likely effects of continuing these restraints in the future. The Commission will provide the

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Acting Chairman Brunsdale and Commissioner Cass determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of fresh, chilled, or frozen pork that are alleged to be subsidized by the Government of Canada. Commissioner Lodwick did not participate in this investigation.

estimates using the same approach and product detail as in the Commission's 1985 study (USITC Publication 1788, Report on Investigation No. 332–214, December 1985—copies are available from the Publications Office (202) 252–1807). The Commission will also explore other economic effects of VRAs focusing on the following: the automotive industry, the construction industry, heavy agricultural and construction equipment manufacturers, appliance and household goods producers, forging produceres and metal stampers.

The Subcommittee requested that the final report on this investigation be submitted on or before May 8, 1989.

Public Hearing and Written Submissions: Interested persons are invited to present, either at a public hearing or in written statements, information concerning matters to be addressed in this study and to comment on the analytical approach used in the Commission's 1985 study. In addition, interested persons are requested to provide, as appropriate, response to the following questions regarding conditions in steel consuming industries and the effects of VRAs.

Industry conditions:

Please describe the primary market factors that have affected your industry during 1984–89 (i.e., how have supply and demand conditions for your products changed and what have been the principal factors underlying the changes).

What was your company's return on sales in each year during 1984–88?

Steel prices:

How has the price of steel purchased by your firm changed in each year during 1984–89?

How much of the changes, if any, do you attribute to the steel VRAs? (Please explain.)

What other factors (such as changes in exchange rates, raw materials costs, and/or world demand) may have contributed to steel price changes?

Steel supply:

Please describe any difficulties you have experienced in obtaining steel products during 1984–89? Such problems might include inability to purchase a certain product, relatively long lead times, or quality problems.

Please explain the extent to which you attribute these difficulties to the steel VRAs.

What other factors may have contributed to these difficulties?

Effects of the VRAs on competitive conditions:

How have steel price changes affected your unit production costs in each of the years during 1984–89?

Please explain how steel supply problems affected your operations, if at all, during 1984–89 (i.e., discuss the extent to which they may have resulted in lost sales, production bottlenecks, or changes in production schedules).

How do you believe the VRAs have affected your ability to compete with imports?

How do you believe the VRAs have affected your ability to export?

What other effects, if any, have the VRAs had on your company (e.g., have they affected investment decisions, the level of steel inventories held, or other areas of your operations)?

Other:

What positive effects, if any, do you believe the VRAs have had on your operations (such as improved quality or lower prices of domestic steel products)?

Implications:

Please describe the effects that you expect, if any, of continuation of the VRAs on your operations and your ability to compete in the U.S. and foreign markets.

In addition to your oral or written comments, please supply a copy of your most recent annual report and 10K report with your response (if unavailable, comparable reports that supply financial information for the years 1984–88 would be appreciated).

The public hearing on this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on March 10, 1989. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, March 8, 1989.

Written statements and post-hearing briefs should be submitted to the Secretary of the Commission at the same address. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written submissions should be received no later than March 17, 1989.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252–1810.

By order the Commission.

Issued: February 28, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–4976 Filed 3–1–89; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

February 27, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and (7) an indication as to whether Section 3504(h) of Public Law 96–511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 AND to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633–4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, AND to Mr. Larry E. Miesse,

DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Reinstatement of a Previously Approved Collection for Which Approval has Expired

(1) Sample Survey of Jails.
(2) CJ5, CJ5A. Bureau of Justice Statisitics, Office of Justice Programs.
(3) Annually.
(4) State or local governments. This sample survey of local jails is needed to provide current information on inmate population. The survey updates data from the 1988 Census of Jails. Data is used for program planning and policy making for corrections.
(5) 1,000 respondents at .2 hours per response.
(6) 200 estimated annual burden hours.
(7) Not applicable under 3504(h)

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Monthly Return of Arson Offenses Known to Law Enforcement.
(2) DO–73. The Federal Bureau of Investigation.
(3) Monthly.
(4) State or local governments. Used to collect the number of arsons and the dollar loss from arson throughout the United States.
(5) 1,716 respondents, 12 responses each annually, at .5 hours per response.
(6) 10,296 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Supplementary Homicide Report.
(2) DO–56. The Federal Bureau of Investigation.
(3) On occasion of a murder.
(4) State or local governments. Needed to collect the age, sex, race, ethnic origin and relationship of murder victims; the weapons and motive. Summary statistics are published in the annual "Crime in the United States."
(5) 929 respondents at .12 hours each.
(6) 110 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Number of Full Time Law Enforcement Employees as of October 31.
(2) DO 52, 52a, 52b. The Federal Bureau of Investigation.
(3) Annually.
(4) State or local governments. Information is needed to determine the number of civilian and sworn male and female law enforcement employees in the United States.
(5) 11,702 respondents at .2 hours each.
(6) 2,340 estimated annual public burden hours.
(7) Not applicable under 3504(h).

New Collection

(1) Petition for Temporary Resident Status As a Replentishment Agricultural Worker (RAW).
(2) I–805, Immigration and Naturalization Serice.
(3) Annually.
(4) Individuals or households. Petition to be filed by alien for determination by INS if alien is eligible for RAW status.
(5) 300,000 respondents at .5 hours each.
(6) 150,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request for consideration as a Replenishment Agricultural Worker.
(2) I–807, Immigration and Naturalization Service.
(3) Annually.
(4) Individuals or households. Registration card to be filed by am alien if he/she desires to be considered for RAW (Replenishment Agricultural Worker) status.
(5) 2,447,000 respondents at .5 hours each.
(6) 1.223,500 estimated annual burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 89–4863 Filed 3–1–89; 8:45 am]

BILLING CODE 4410–10–M

[AAG/A Order No. 31–89]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS).

The Password Issuance and Control System (PICS), JUSTICE/INS–011, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) has been published. The purpose of the system is to expedite determinations of eligibility to access INS automated systems and to improve control by ADP Security Officers of ADP password and user ID distribution.

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to conclude its review of the system. Therefore, please submit any comments by April 3, 1989. The public, OMB, and the Congress are invited to submit comments to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 528, 633 Indiana Avenue NW., Washington, DC 20531.

In accordance with 5 U.S.C. 552a(o), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Date: February 14, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/INS–011

System Name:

Password Issuance and Control System (PICS).

System Location:

Central, Regional, and District offices of the Immigration and Naturalization Service (INS) as detailed in JUSTICE/INS–999.

Categories of Individuals Covered by the System:

Those INS employees, INS contractor employees, and other Federal, State or local government employees for whom authorization to access and use INS automated data processing (ADP) systems has been requested.

Categories of Records in the System:

This system of records consists of paper records (INS Form G–872, Request for ADP Password) and an automated data base. INS Form G–872 contains personal identification data such as name, social security number, office location code, organization code, ADP security clearance information, office telephone number, company name of contractor employees, and a statement by the supervisor certifying the official need for access. Upon approval of the request, the user ID code and password issued will be included on the Form. The automated data base may include information extracted from INS Form G–872 and from the Secrutiy Clearance Inforamtion System (SCIS), JUSTICE/JMD–008. The SCIS data is necessary to determine the suitability and trushworthiness to access the information.

Authority for Maintenance of the System:

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by Section 274A of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324) and Department of Justice Order 2640.2A which delegates ADP security authority to INS for maintaining and operating its systems.

Purpose(s):

The purpose of the system is to expedite determinations of eligibility to access INS automated systems and to improve control by ADP Security Officers of ADP password and user ID distribution.

Routine Uses of Records Maintained in the System Including Categories of Users and Purpose of Such Uses:

Relevant information contained in this system of records may be disclosed as follows:

A. Where there is an indication of violation or potential violation of law (whether civil, criminal or regulatory in nature), to the appropriate agency (whether Federal, State, local or foreign) charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

B. To the General Services Administration and the National Archives and Records Administration in records managmenet inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Polices and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

Storage:

Those records which can be accessed electronically are stored in a database on magnetic disc. Forms G–872, Request for ADP Password, are maintained in file folders at Central, Regional and District ADP Security Offices.

Retrievability:

These records are retrieved by social security number.

Safeguards:

INS offices are located in buildings under security guard, and access to premises is by official identification. Paper records are stored in locked files during non-duty hours. Access to automated data is obtained through terminals which require the use of restricted passwords and user IDs. Only designated Security Officers have access to PICS for creating and updating records of users within their jurisdiction.

Retention and Disposal:

Inactive automated records are retained 10 years after date of last action and then deleted from the system. INS Forms G–872, Request for ADP Password, are retained 3 years after final action and then destroyed by shredding.

System Manager and Address:

The Servicewide system manager is the Director, Technical Services Branch, Data Systems Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

Notification Procedure:

Address inquires to the system manager identified above.

Record Access Procedures:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the address identified above. Clearly mark the envelope and letter "Privacy Act Request." Provide the full name, social security number, user ID, and notarized signature of the individual who is the subject of the record, and a return address.

Contesting Records Procedures:

Direct all requests to contest or amend information to the FOIA/PA Officer at the address identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

Record Source Categories:

INS Form 872, Request for ADP Password, completed by the supervisor or program manager, and security clearance information extracted from SCIS, JUSTICE/JMD–008.

Systems Exempted from Certain Provisions of the Act:

None.

[FR Doc. 89–4803 Filed 3–1–89; 8:45 am]
BILLING CODE 4410–10

Antitrust Division

Proposed Termination of Final Judgement; F&M Schaefer Brewing Co. and Anheuser-Busch, Inc.

Notice is hereby given that Anheuser-Busch, Inc. ("ABI"), has filed a motion in the United States District Court for the Eastern District of New York to terminate the "Final Judgment" entered against it in *United States* v. *F. & M. Schaefer Brewing Company and Anheuser-Busch, Inc.*, Civil No. 62 C 1421. The Department of Justice ("Department"), in a stipulation also filed with the court has consented to the termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

The complaint in this case, filed December 20, 1962, alleged that a 1961 agreement between ABI and F. & M. Schaefer Brewing Company ("Schaefer") pursuant to which Schaefer would be the sole distributor of ABI products in the New York City area unlawfully restrained trade. At that time, Schaefer was the largest seller of beer in the New York City area and ABI was the largest seller of beer in the United States.

The Final Judgment entered against ABI upon consent on January 30, 1968 enjoins ABI from entering into any agreement whereby: (1) It would distribute the beer of another brewer; (2) it would distribute its beer through another brewer; (3) it would agree with another brewer to appoint a third person to distribute both their beers; (4) it would distribute its beer through a distributor in which another brewer has a stock interest or a common officer, director or managing agent; or (5) another brewer would distribute beer through a distributor in which ABI has a stock interest or a common officer, director, or managing agent.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and Final Judgment, ABI's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the

Department. Such comments must be received within the sixty (60) day period established by court order, and will be filed with the court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, Department of Justice, 555 4th Street, NW., Room 10–102, Washington, DC 20001 (telephone 202–724–6694).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–4801 Filed 3–1–89; 8:45 am]

BILLING CODE 4410–01–M

Proposed Modification of Final Judgment; Time Finance Adjusters

Notice is hereby given that Time Finance Adjusters ("TFA") has filed with the United States District Court for the Middle District of Florida a motion to modify the final judgment in *United States* v. *Time Finance Adjusters,* Civil No. 81–003–Orl–CIV–Y (the "1981 Judgment"); and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to modification of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

The complaint in this case (filed on January 6, 1981) alleged that TFA had combined and conspired to agree on, prepare, publish in its directory, disseminate and encourage members to adhere to fee schedules for repossession services; to restrict membership to one or few members in each designated geographic territory; to restrict the area for which each of defendant's members could advertise its repossession services; and to establish arbitrary and unreasonable membership rules and restrictions.

The 1981 Judgment: (1) Prohibits price fixing and other conduct relating to pricing, such as publishing or recommending prices and communicating with other repossessor organizations about prices; (2) prohibits TFA from imposing advertising and operating restrictions upon its members; (3) prohibits territorial exclusivity; and (4) requires TFA to admit into membership and repossessor who meets certain minimum criteria.

The proposed modification to the 1981 Judgment would allow TFA to exclude or terminate from membership any person that uses as a business name in any aspect of its repossession business a name that identifies any trade association, membership organization, franchise or other association of businesses engaged in the repossession business such as, but not limited to, TFA, National Finance Adjusters, Allied Finance Adjusters, American Recovery Association, American Lenders Service Company, or any variation thereof. The modified decree would expire on November 17, 1991, ten years after the entry of the original decree.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that modification of the judgment would serve the public interest. Copies of the complaint and final judgment, TFA's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, United States Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202/633–2481), and at the office of the Clerk of the United States District Court for the Middle District of Florida, Orlando, Florida. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed modification of the decree to the Department. Such comments must be received within the sixty-day period established by court order and will be filed with the court. Comments should be addressed to Robert E. Bloch, Chief, Professions and Intellectual Property Section, Antitrust Division, United States Department of Justice, Washington, DC 20530. (telephone: 202/724–7425)

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–4802 Filed 3–1–89; 8:45 am]

BILLING CODE 4401–01–M

Westinghouse Electric Corp., et al.; Competitive Impact Statements and Proposed Consent Judgments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of New York in *United States v. Westinghouse Electric Corporation, ABB Asea Brown Boveri Ltd., and Asea Brown Boveri Inc.,* Civil Action No. 89–CIV–1032.

The Complaint in this case alleges that the effect of the proposed joint ventures between Westinghouse and ABB may be substantially to lessen competition in the United States markets for power transformers, converter transformers, steam turbine generator equipment and steam turbine generator service, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Judgment: (a) Orders and directs ABB to divest any and all interest that it has or shall acquire in all power transformer business and assets of ABB Electric, Inc. in Waukesha, Wisconsin; (b) orders and directs Westinghouse to sell its converter transformer and smoothing reactor technology, or grant the right to use or license that technology; (c) enjoins and restrains Westinghouse and ABB for a period of ten (10) years from the entry of the proposed Final Judgment from any merger, consolidation, acquisition of stock or assets or other combination, or any joint venture, partnership or other agreement, the purpose or effect of which would be to integrate or otherwise combine any of the respective businesses of manufacture or sale of steam turbine generator equipment or steam turbine generator service of Westinghouse and ABB; and (4) orders and directs Westinghouse to abrogate restraints on the manufacture and sale of power transformers by General Electric Company which arose out of General Electric Company's sale of power transformer assets to Westinghouse in 1986.

The proposed Final Judgment requires Westinghouse and ABB to divest and dispose of, respectively, the above-described power transformer assets and converter transformer technology within one hundred eighty (180) days of entry of the proposed Final Judgment. If the divestiture and disposition are not accomplished within the 180-day period, the Court shall, upon application of the United States, appoint a trustee to effect the remaining divestiture or disposition. Under the proposed Final Judgment, Westinghouse and ABB or the trustee, whichever is then responsible for effecting the divestiture or disposition required, shall notify the Department of any proposed divestiture or disposition required by the Final Judgment. The divestiture and disposition are to be made to persons acceptable to the United States in its sole determination.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Ralph T. Giordano, Chief, New York Field Office, Antitrust Division, United States Department of Justice, 26 Federal Plaza, Room 3630,

New York, New York 10278-0096, (212) 264-0390.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Civil No. 89-CIV-1032
Filed: February 14, 1989
Judge: Robert W. Sweet,

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Southern District of New York.

(2) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:_____

For Plaintiff United States of America:

Charles F. Rule,

Assistant Attorney General.

Michael Boudin,

John W. Clark,

Ralph T. Giordano,

Attorneys, U.S. Department of Justice, Antitrust Division.

Charles V. Reilly,

Charles R. Schwidde,

Maryanne F. Carnnival,

Patricia L. Jannaco,

Attorneys, U.S. Department of Justice, Antitrust Division, 26 Federal Plaza, New York, NY 10278, (212) 264-0665.

For Defendant Westinghouse Electric Corporation, Jones, Day, Reavis & Pogue, (by): a Member of the Firm, Metropolitan Square, 1450 G Street, NW., Washington, DC.

For Defendants ABB ASEA Brown Boveri LTD. and ASEA Brown Boveri Inc., Winthrop, Stimson, Putnam, & Roberts, (by) a Member of the Firm, 40 Wall Street, New York, NY 10005.

Stipulation Approved for Filing.

Done this _____ day of February 1989.

United States District Judge.

Final Judgment

Whereas, plaintiff, United States of America, has filed its Complaint herein on February 14, 1989, and the plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, defendants' prompt and certain divestiture and disposition of assets and other interests are, among other things, essential to this agreement, and defendants have represented to the plaintiff that the divestiture and disposition required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or disposition requirements set forth below;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I—Jurisdiction

This court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II—Definitions

As used in this Final Judgment:

A. "Westinghouse" means defendant Westinghouse Electric Corporation; each division, subsidiary, or other person controlled by it; and each officer, director, employee, agent, or other person acting for or on behalf of any of them.

B. "ABB" means defendants ABB Asea Brown Boveri Ltd. and Asea Brown Boveri Inc.; each division, subsidiary, or other person controlled by it; and each officer, director, employee, agent, or other person acting for or on bahalf of any of them.

C. "Person" means any individual, corporation, association, firm, partnership, or other business or legal entity.

D. "Transformer" means a static device used to transfer electrical energy from one circuit to another by induction.

E. "Power Transformer" means a transformer with a minimum OA nameplate power rating of 40 megavolt-amperes ("MVA") or higher.

F. "Converter transformer" means a specialized transformer that is a component of a converter unit, which converts alternating electrical current to direct current or vice versa, for use primarily as a component of high voltage direct current systems.

G. "Smoothing reactor" means a device used to introduce reactance into a circuit for the purpose of reducing the alternating current component in a direct current power system.

H. "Steam turbine generator equipment" means steam turbines, 65 megawatts or higher, and/or electric generators, 65 megawatts or higher, used to convert the energy or high temperature pressurized steam to electrical energy.

I. "Steam turbine generator service" means the repair, retrofitting, or modernization of steam turbine generator equipment.

J. "Westinghouse converter transformer and smoothing reactor technology" means all patents, patent applications, trade secrets, confidential technical information, manufacturing instructions, and other intellectual property and property rights owned by, or licensed to, Westinghouse prior to consummation of the electric transmission and distribution equipment joint venture with ABB and used principally in the design or manufacture of converter transformers or smoothing reactors. The term Westinghouse converter transformer and smoothing reactor technology shall also include existing manufacturing drawings employed exclusively in the design or manufacture of converter trnsformers or smoothing reactors. A grantee of rights pursuant to Section VI of this Final Judgment may request within one (1) year of the grant a copy of the existing manufacturing drawings, subject to the requirement that the grantee shall fully reimburse Westinghouse for any reasonable costs associated with the duplication of such drawings.

III—Application

A. The provisions of the Final Judgment shall apply to Westinghouse and ABB, each of their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. The provisions of Sections V through XI of this Final Judgment shall be applicable only upon the consummation of the proposed joint venture between Westinghouse and ABB relating to electrical transmission and distribution equipment.

C. Nothing contained in this Final Judgment shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

D. Westinghouse and ABB shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV—Injunction

Westinghouse and ABB are enjoined and restrained for a period of ten (10) years from the entry of this Final Judgment from any merger, consolidation, acquisition of stock or assets or other combination, or any joint venture, partnership or other agreement between them, the purpose or effect of which would be to integrate or otherwise combine any of their respective businesses of the manufacture or sale of steam turbine generator equipment or steam turbine generator service in the United States, without the prior written approval of the Assistant Attorney General in charge of the Antitrust Division or his designee.

V—Assets To Be Divested by ABB

A. ABB is hereby ordered and directed to divest, to an eligible purchaser, any and all interest that it has or shall acquire in all transformer businesses of ABB Electric, Inc. located in Waukesha, Wisconsin, including any and all interest in any plants or other real or personal property relating to such businesses, the right to use any relevant technology or known-how, and the right to enter into all relevant licenses.

B. Unless the plaintiff otherwise consents, divestiture under Section V.A., or by the trustee appointed pursuant to Section VII, shall be accomplished in such a way as to satisfy the plaintiff, in its sole determination, that the business and assets to be divested can and will be operated by the purchaser as a viable, ongoing business, engaged in the manufacture and sale of power transformers in the United States. Divestiture under Section V.A., or by the trustee, shall be made to a purchaser for whom it is demonstrated to the plaintiff's sole satisfaction that: (1) The purchase is for the purpose of competing effectively in the manufacture and sale of power transformers in the United States and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of power transformers in the United States.

C. ABB shall take all reasonable steps to accomplish quickly the divestiture of the power transformer business and assets of ABB Electric, Inc. contemplated by this Final Judgment.

VI—Assets To Be Disposed of by Westinghouse

Westinghouse is hereby ordered and directed: (1) To sell to an eligible person the Westinghouse converter transformer and smoothing reactor technology; or (2) to grant to an eligible person the right to use and to license said technology. The sale or grant shall be subject to pre-existing rights held by any third party with respect to the relevant technology. The grant shall be subject to the continuing right of defendant Westinghouse or its successors and assigns to use and to license said technology. The sale or grant shall be made to a person for whom it is demonstrated to plaintiff's sole satisfaction that: (a) The sale or grant is for the purpose of enabling the purchaser or grantee to compete effectively in the sale of converter transformers in the United States; and (b) the purchaser or grantee has the managerial, operational and financial capability to compete effectively in the sale of converter transformers in the United States. Westinghouse shall hold separate and not disclose to ABB the Westinghouse converter transformer and smoothing reactor technology until such time as a disposition required under this section is completed.

VII—Appointment of Trustee

A. In the event that defendants have not divested or disposed of all of their interests as required by Sections V.A. and VI within 180 days of the entry of this Final Judgment, the Court shall, on application of the plaintiff, appoint a trustee to effect the required divestiture or disposition, provided, however, that plaintiff may, at its sole discretion, extend the time period for an additional period of time not to exceed ninety (90) days if defendants request such an extension and demonstrate to plaintiff's satisfaction that ongoing negotiations are likely to result in the required divestiture or disposition but that the divestiture or disposition cannot be completed within the initially specified period. After the appointment of a trustee becomes effective, only the trustee shall have the right to effect the divestiture or disposition required pursuant to Section V.A. and VI. The trustee shall have the power and authority to accomplish the divestiture or disposition at the best prices then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Defendants shall not object to a divestiture or disposition by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the plaintiff and the trustee within 15 days after the trustee has provided the notice required under Section VIII.

B. If defendants have not divested or disposed of all of their interests as required by Section V.A. and VI within 150 days of entry of this Final Judgment, the plaintiff and defendants shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of the trustee who shall effect the required divestiture or disposition. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within 30 days of the exchange of names, the plaintiff shall notify the Court of the person upon whom the parties agreed, and the Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, the plaintiff shall furnish the Court the names of each party's nominees. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to ABB or Westinghouse, as may be appropriate, and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture or disposition and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture or disposition. Upon reasonable notice to defendants, the trustee and any

consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to personnel, books, records, and facilities as reasonably necessary to accomplish the divestiture or disposition, and defendants shall develop such relevant financial or other information as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture or disposition.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture or disposition ordered under this Final Judgment. If the trustee has not accomplished such divestiture or disposition within 180 days after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture or disposition, (2) the reasons, in the trustee's judgment, why the required divestiture or disposition has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment.

VIII—Notification

A. Defendants or the trustee, whichever is then responsible for effecting the divestiture or disposition required herein, shall notify the plaintiff of any proposed divestiture or disposition required by Section V.A. or VI of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any of the assets or interests to be divested or disposed, together with full details of the same. Within 15 days after receipt of the notice, the plaintiff may request additional information concerning the proposed divestiture or disposition, the proposed purchaser or grantee, and any other potential purchaser or grantee. Defendants or the trustee shall furnish the additional information within 15 days of the receipt of the request unless plaintiff agrees to extend the time. Within 30 days after receipt of the notice or within 30 days after receipt of the additional information, whichever is later, the plaintiff shall notify in writing defendants and the trustee, if there is one, if it objects to the proposed divestiture or disposition. If the plaintiff fails to object within the period specified, or if the plaintiff notifies in writing defendants and the trustee, if there is one, that it does not object, then the divestiture or disposition may be consummated, subject only to defendants' limited right to object to the sale under Section VII.A. Upon objection by defendants under Section VII.A. Upon objection by defendants under Section VII.A., the proposed divestiture or disposition shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date of entry of this Final Judgment and 30 days thereafter until the divestiture and disposition have been completed, defendants shall deliver to the plaintiff a written report as to the fact and manner of compliance with Sections V and VI of this Final Judgment. Each such report shall include, for each person who during the preceding 30 days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any of the assets or interests to be divested or disposed, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Defendants shall maintain full records of all efforts made to accomplish the divestiture or disposition.

IX—Financing

Defendants shall not finance all or any part of any purchase made pursuant to sections V or VI of this Final Judgment without the prior consent of the plaintiff.

X—Preservation of Assets to be Divested by ABB

A. ABB shall preserve, hold, and continue to operate as a going business the assets to be divested pursuant to Section V, with its assets, management, and operations separate, distinct, and apart from those of defendants, unless the plaintiff otherwise consents. ABB shall use all reasonable efforts to maintain the assets to be divested as a viable and active competitor in the market for power transformers.

B. ABB shall not sell, lease, assign, transfer, or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefore), the assets to be divested, except that any such asset that is replaced in the ordinary course of business with a newly purchased asset may be sold or otherwise disposed of, provided the newly purchased asset is so identified as a replacement for an asset to be divested.

C. The provisions of Sections X.A. and X.B. include but are not limited to: preserving all plants and equipment used for the manufacture or sale of power transformers; preserving all air pollution and operating permits (including proceeding with such application or operation as is necessary to renew such permits or make permanent any temporary permits); and preserving all administrative and support facilities. These provisions do not preclude the sale in the ordinary course of business of the power transformers as may be produced by the assets to be divested.

D. ABB shall provide and maintain sufficient working capital to maintain the assets to be divested as a viable, ongoing business.

E. ABB shall provide and maintain sufficient lines and sources of credit to maintain the assets to be divested as a viable, ongoing business.

F. ABB shall preserve the assets to be divested in a state of repair equal to their state of repair as of the date of defendants' joint venture agreement

G. ABB shall identify separately all major assets or replacements for or proceeds therefrom that were used in the manufacture or sale of power transformers by ABB Electric, Inc. prior to the date on which defendants consummate their joint venture relating to electric transmission and distribution equipment.

H. ABB shall maintain on behalf of the assets to be divested, in accordance with sound accounting practice separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of the assets to be divested on a monthly and quarterly basis.

I. ABB shall refrain from terminating or reducing any current employment, salary, or benefit agreements for any management, engineering, or other technical personnel employed in connection with the assets to be divested, except in the ordinary course of business, without the prior approval of plaintiff.

J. Defendants shall refrain from taking any action that would have effect of reducing the scope or level of competition between the assets to be divested and other manufacturers or sellers or power transformers, without the prior approval of the plaintiff.

K. Defendant shall refrain from taking any action that would jeopardize the sale of the assets to be divested as a viable going concern.

XI—Amendment to General Electric Company and Westinghouse Asset Purchase Agreement

Westinghouse, having agreed on February 9, 1989 with General Electric Company to amend their November 18, 1986 assest purchase agreement relating to power transformers, which amendment would allow General Electric Company, to the extent provided therein, to resume the manufacture and sale of power transformers and to use intellectual property relating to power transformers, it is hereby ordered and directed to take all reasonable steps to consummate and otherwise give full force and effect to February 9, 1989 amendment.

XII—Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, be permitted:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If a time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII—Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV—Termination

This Final Judgment will expire on the tenth anniverary of the date of its entry.

XV—Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA") 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I—Nature and Purpose of the Proceeding

Contemporaneously with this statement, the United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, alleging that two proposed partnership joint ventures between Asea Brown Boveri Inc. and Westinghouse Electric Corporation ("Westinghouse") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint names as defendants Westinghouse and Asea Brown Boveri, Inc. and its parent company, ABB Asea Brown Boveri Ltd.[1] The Complaint alleges that the effects of the joint ventures may be substantially to lessen competition in the United States markets for power transformers, converter transformers, steam turbine generator equipment and steam turbine generator service. The Complaint seeks such injunctive relief and relief by way of preservation of assets and divestiture as is appropriate to prevent the anticompetitive effects of the joint ventures and to maintain existing competitive conditions in these markets.

Together with the filing of this Competitive Impact Statement, the United States and defendants have filed a stipulation by which they consent to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the proposed joint ventures. Under the proposed Final Judgment, as explained more fully below, ABB would be required, within six months, to sell any and all interest it has or shall acquire in all the transformer businesses of ABB Electric, Inc. in Waukesha, Wisconsin ("Waukesha business"). If it does not do so, a trustee apponted by the Court would be empowered for an additional six months to sell the Waukesha business. If the trustee is unable to do so, the Court may extend the trustee period or enter such other orders as it shall deem appropriate in order to carry out the purpose of the trust.

The proposed Final Judgment would also require Westinghouse, within six months, to sell its converter transformer and related smoothing reactor technology, or grant the right to use and to license that technology to an eligible person. If it does not do so, the Court would be empowered to appoint a trustee to accomplish such a sale or grant.

Under the proposed Final Judgment, Westinghouse would be further required to release General Electric Company

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[1] Hereinafter, the term "ABB" means ABB Asea Brown Boveri Ltd. and Asea Brown Boveri Inc.

from its covenant not to compete with Westinghouse in power transformers, which General Electric agreed to in connection with the sale of its power transformer business to Westinghouse in 1986.

The proposed Final Judgment would also enjoin, for a period of 10 years, Westinghouse and ABB from combining their steam turbine generator equipment or steam turbine generator service businesses in the United States.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations of the proposed Final Judgment.

II—Events Giving Rise to the Alleged Violation

ABB, with headquarters in Zurich, Switzerland, is the world's largest producer of electric power equipment. Westinghouse, with headquarters in Pittsburgh, Pennsylvania, is also one of the world's leading producers of electric power equipment. ABB and Westinghouse have agreed to form two partnership joint ventures,[2] one relating to electric power transmission and distribution products, and the other relating to electric power generation products. The power transmission and distribution joint venture would combine, among other thing, the companies' respective power transformer and converter transformer businesses in the United States. The power generation joint venture would combine defendants' respective steam turbine generator equipment and steam turbine generator service businesses in the United States. Defendants would transfer certain manufacturing plants, technology, or other assets to the new joint venture companies. ABB also would pay Westinghouse more than $500 million in cash. Each of the joint ventures would be conditioned on the performance of the important terms of the other joint venture.

A. Power Transformers

Power transformers are static devices used to transfer electric energy from one circuit to another by induction.[3] They are used by electric power utilities to convert low voltage electricity produced by a power generating unit to higher voltages that are more efficiently carried over transmission lines, and to reduce voltages between transmission and distribution lines to deliver electricity safely to utility customers. Investor owned utilities and utilities owned and operated by federal, state, county and municipal governments are the principal purchasers of power transformers in the United States.

The Complaint alleges that the sale of power transformers constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which power transformers are sold within the meaning of Section 7 of the Clayton Act. Successful entry into the power transformer market is difficult because of the cost and time required to develop the necessary technology to produce power transformers, to construct the physical facilities required for production of power transformers, to assemble the necessary technical, sales and service personnel, and to become a qualified source of power transformers for domestic electric utilities.

ABB was the largest seller of power transformers in the United States in 1987. In that same year, Westinghouse was the second leading seller of power transformers in the United States. In terms of unit sales, the 1987 power transformer market shares of ABB and Westinghouse were 27 percent and 26 percent, respectively. The Complaint alleges that the United States market for power transformers is highly concentrated. Based on 1987 units sales, the proposed combination would increase the Herfindahl-Hirschman Index ("HHI") [4]by over 1386 to 3264.

B. Converter Transformers

The manufacture of converter transformers involves a technology different from that used in the manufacture of power transformers. Converter transformers are sold primarily to companies that design high voltage direct current (HVDC) systems, which are used in transmitting electricity over long distance transmission lines. They are also used to connect asynchronous transmission systems. Converter transformers are major cost items in HVDC systems.

The Complaint alleges that sale of converter transformers constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which converter transformers are sold, within the meaning of section 7 of the Clayton Act.

ABB is the largest seller of converter transformers in the United States and, since 1981, has accounted for more than 50 percent of all converter transformers sold in the United States. General Electric Company was a major competitor of ABB until it sold its converter transformer technology (and related smoothing reactor technology [5]) to Westinghouse in 1986. Westinghouse is one of only a few companies possessing such technology since 1986, Westinghouse has been one of only four companies bidding to supply converter transformers in the United States.

C. Steam Turbine Generator Equipment

Steam turbine generator equipment consists of a turbine and a connecting generator. Steam passes through the turbine causing the generator rotor and an attached electromagnet to rotate within a stator, generating electicity. Steam turbine generator equipment is the principal means by which nuclear and fossil-fueled utility plants generate electricity from steam energy produced by nuclear reactor or conventional boiler operations. The principal purchasers of steam turbine generator equipment are utilities. Steam turbine generator equipment is also sold to cogenerators, independent power producers and industrial customers.

The Complaint alleges that the sale of steam turbine generator equipment constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which steam turbine generator equipment is sold within the meaning of section 7 of the Clayton Act. Successful entry into the steam turbine generator equipment market in the United States is difficult because of the cost and time required to develop the necessary technology to produce steam turbine

[2] Defendants agreed to a preliminary Memorandum of Understanding in April of 1988.

[3] As used herein, power transformers refers to transformers with minimum OA power ratings of 40 megavolt-amperes ("MVA") or higher.

[4] The HHI is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. for example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

[5] A smoothing reactor is a device used to introduce reactance into a circuit for the purpose of reducing the alternating current component in a direct current power system.

generator equipment, to construct the physical facilities required for production and service of steam turbine generator equipment, to assemble the necessary technical, sales and service personnel and to become a qualified source of steam turbine generator equipment for domestic electric utilities.

In the period 1983 through 1987, total sales of steam turbine generator equipment in the United States were approximately $442 million. Westinghouse and ABB were the first and third largest suppliers of steam turbine generator equipment in the United States in that period, with market shares of 43 percent and 19 percent, respectively.

The Complaint alleges that the United States market for steam turbine generator equipment is highly concentrated. The proposed joint venture would create a firm controlling approximately 62 percent of steam turbine generator equipment sold in the United States, based on sales in the period 1983 through 1987. The proposed combination would increase the HHI by 1566 to 4693.

D. Steam Turbine Generator Service

Owners of steam turbine generator equipment may at times require equipment repairs involving the replacement or retrofitting of major components, or equipment modernization efforts aimed at significant efficiency enhancements or life extensions. Such steam turbine generator service is provided principally to private and public utility companies. In the past several years manufacturers of steam turbine generator equipment have begun bidding to provide such service not only for equipment of their own manufacture but also for equipment manufactured by others.

The Complaint alleges that the sale of steam turbine generator service constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which steam turbine generator service is provided within the meaning of section 7 of the Clayton Act. Successful entry into the steam turbine generator service market is difficult because of the cost and time required to develop the necessary technology to provide steam turbine generator service, to construct the physical facilities required for provision of such service, to assemble the necessary technical, sales and service personnel, and to become a qualified source for steam turbine generator service for domestic electric utilities.

The Complaint alleges that the United States market for steam turbine generator service is highly concentrated. Westinghouse and ABB are leading suppliers of steam turbine generator service in the United States. Only five companies have provided such steam turbine generator service in the United States during the period from 1983 through 1987.

III—Explanation of the Proposed Final Judgment

The United States brought this action because the effect of these joint ventures may be substantially to lessen competition in the United States markets for power transformers, converter transformers, steam turbine generator equipment and steam turbine generator service, in violation of section 7 of the Clayton Act. As described in detail below, the provisions of the Final Judgment are designed to eliminate the anticompetitive effects of the proposed joint ventures.

A. Remedy as to Power Transformers

The proposed Final Judgment contains two remedies that will preserve the competition in power transformers that the joint venture of defendants would otherwise eliminate. First, the proposed Final Judgment requires ABB, within six months of its filing, to divest itself of its power transformer plant at Waukesha, Wisconsin, which is its only power transformer facility in the United States.[6] If ABB cannot accomplish the required divestiture within that period, the proposed Final Judgment provides that, upon application by the United States, the Court shall appoint a trustee to effect the divestiture.

The proposed Final Judgment provides that the Waukesha business must be divested in such a way as to satisfy the United States that this business can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the power transformer market. ABB must take all reasonable steps necessary to accomplish the divestiture and shall cooperate with bona fide prospective purchasers and, if one is appointed, the trustee.

In a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the trustee has not accomplished the divestiture, the trustee and the parties will make recommendations to the Court and the Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment provides the United States an opportunity to review any proposed divestiture before it occurs. If the United States requests information from defendants to assess a proposed sale, the sale may not be consummated until at least 20 days after defendants supplied the information. If the United States objects to a proposed divestiture, the sale may not be completed.

The proposed Final Judgment provides that until the required divestiture has been accomplished, ABB must preserve and maintain the Waukesha business as a viable and active competitor. ABB must hold the Waukesha business, including all books and records, separate and apart from its other assets and businesses, and must maintain the Waukesha business as a saleable and economically viable, ongoing business.

The second element of the power transformer relief in the proposed Final Judgment provides for the restoration of General Electric Company as a competitor in the United States power transformer market. In 1986 General Electric sold most of its power transformer business to Westinghouse; the substantial terms of this transaction are reflected in an agreement between the parties dated November 18, 1986. As a part of that transaction General Electric agreed not to compete for the sale of power transformers of 40 MVA and above for a period of ten years; that period expires in November, 1996.[7] General Electric again desires to compete in the power transformer market. On February 9, 1989, it agreed with Westinghouse to an amendment to the 1986 agreement which abrogates the covenant not to compete and also grants to General Electric a license to use the technology relating to power transformers that General Electric sold to Westinghouse. The amendment will become effective upon the commencement of operations by the Westinghouse-ABB joint venture. The proposed Final Judgment requires

[6] ABB also manufactures power transformers at plants in Canada and Europe.

[7] General Electric continues to manufacture power transformers of less than 40 MVA at its plant in Rome, Georgia.

Westinghouse to consummate that agreement.

Thus, the proposed Final Judgment requires the divestiture of the assets used by ABB in the manufacture of power transformers in the United States. In addition, it will permit General Electric Company, which in years past has been the largest United States manufacturer of electric equipment, again to become a competitor in the power transformer market. The combination of the two elements of relief will restore the competition in power transformers that would otherwise be eliminated by the joint venture of Westinghouse and ABB.

B. Remedy as to Converter Transformers

In its 1986 agreement with General Electric Company, Westinghouse also purchased General Electric's technology relating to converter transformers. That technology enabled Westinghouse to enter the converter transformer market and to begin bidding to supply converter transformers for use in high voltage direct current (HVDC) systems. As alleged in the Complaint, Westinghouse and ABB are two of only a few firms possessing such technology and currently bidding to supply converter transformers in the United States.

The proposed Final Judgment requires Westinghouse to sell or to grant the right to use and license its converter transformer (and related smoothing reactor) technology. The sale or license would be subject to any pre-existing rights held by any third party with respect to the relevant technology. The sale or license is to be made to a person, for whom it is demonstrated to plaintiff's sole satisfaction, that intends to sell and is capable of selling converter transformers in the United States. Westinghouse is to hold separate and not disclose to ABB the technology pending completion of the requried disposition.[8]

C. Remedies as to Steam Turbine Generator Equipment and Steam Turbine Generator Service

The proposed Final Judgment enjoins and restrains Westinghouse and ABB, for a period of 10 years, from entering into their proposed joint venture, or any similar agreement, relating to steam turbine generator equipment and steam turbine generator service without the prior written approval of the Antitrust Division.

IV—Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of sectdion 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V—Procedure Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Ralph T. Giordano, Chief, Antitrust Division, New York Field Office, United States Department of Justice, 26 Federal Plaza, Room 3630, New York, NY 10278–0096.

VI—Alternatives to the Proposed Final Judgment

With respect to the power generation joint venture agreement, the injunction in the proposed Final Judgment prohibiting Westinghouse and ABB from combining their respective steam turbine generator equipment and steam turbine generator service businesses provides all the relief that could be obtained by the United States with respect to that joint venture after a full trial on the merits.

With respect to the transmission and distribution joint venture agreement, an alternative to settling this action pursuant to the proposed Final Judgment would be for the United States to seek preliminary and permanent injunctions against consummation of the joint venture agreement that relates to, among other things, the market for power transformers and converter transformers. The United States rejected this alternative because the sale required under the proposed Final Judgment of ABB's Waukesha business will establish a viable, independent competitor in the power transformer market in the United States. The Waukesha plant is ABB's only power transformer facility in the United States and manufactures a substantial range of the sizes of power transformers that sells in the United States. ABB manufactures larger sizes that it sells in the United States at plants in other countries. A buyer which, like ABB, also makes large power transformers at plants in other countries, will assume a similar position in the United States market as that now held by ABB. Whether or not the purchaser of Waukesha produces large power transformers, however, Westinghouse's release of General Electric Company from its covenant not to compete in the United States in the manufacture and sale of power transformers will likely result in General Electric's reentry as a viable, independent competitor in the power transformer market in the United States.

With respect to the converter transformer market, the sale or grant of the right to use and license Westinghouse's converter transformer and smoothing reactor technology will facilitate new entry into that market. That transaction will duplicate the transaction that brought Westinghouse into the converter transformer market.

The United States is therefore satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed joint ventures alleged in the complaint. Further, although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)-(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final

[8] The February 9, 1989 amendment to the Westinghouse-General Electric agreement also permits General Electric to reenter the converter transformer market and grants to General Electric a license to use the converter transformer technology it sold to Westinghouse in 1986. That transaction is independent of the requirement of the proposed Final Judgment relating to converter transformer technology. Plaintiff takes no position at this time as to whether that transaction satisfies the converter transformer requirement of the proposed Final Judgment.

Judgment because defendants have agreed to comply with the terms of the Judgment pending its entry by the Court.

VII—Determinative Documents

Amendment 3 to the 1986 Asset Purchase Agreement between General Electric Company and Westinghouse Electric Corporation, dated February 9, 1989, and the 1986 agreement itself are determinative documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment. Accordingly, these documents are filed with this Competitive Impact Statement. However, insofar as the contracts contain confidential, commercially sensitive information relating to the prices paid for the various transfers of rights, that information has been redacted. The United States is prepared to file unredacted contracts with the Court, under seal, at its request.

Dated:_____

Ralph T. Giordano,

Chief, New York Office.

Charles V. Reilly,

Charles R. Schwidde,

Mary Anne F. Carnival,

Patricia L. Jannaco,

Attorneys, U.S. Department of Justice, Antitrust Division, Room 3630, New York, NY 10278–0096, (212) 264–0390.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing to be served upon ABB Brown Boveri Ltd. and its subsidiary, Asea Brown Boveri Inc., and upon Westinghouse Electric Corporation by delivery to their respective attorneys Jones, Day, Reavis & Pague and Winthrop, Stimson, Putnam & Roberts on this 14th day of February 1989.

Charles V. Reilly,

Attorney, U.S. Department of Justice, Antitrust Division, Room 3630, New York, NY 10278–0096, (212) 264–0390.

[FR Doc. 89–4795 Filed 3–1–89; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 88–58]

Leon D. Goggin, M.D.; Revocation of Registration

On June 3, 1988, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Leon D. Goggin, M.D., (Respondent), of 620 Beaver Avenue, Midland, Pennsylvania, and Westinghouse Electric Corp., Beaver, Pennsylvania, proposing to revoke his two DEA Certificates of Registration, AG1664742 and BG0906377. The Order to Show Cause alleged that the Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of his Certificates of Registration pending the outcome of these proceedings. 21 U.S.C. 824(d).

Respondent, through counsel, requested a hearing in a letter dated June 20, 1988. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Washington, DC on November 22, 1988. Both parties waived the provisions of 21 CFR 1316.64 for the filing of post-hering findings and conclusions and written argument. Instead, at the conclusion of testimony, Judge Young heard oral argument from both sides. The Judge announced his findings, conclusions and decision from the bench immediately thereafter. On December 16, 1988, the Administrative Law Judge issued his written opinion and recommended ruling, findings, conclusions and decision. On January 6, 1989, Respondent filed exceptions to the opinion and recommended ruling of the Administrative Law Judge. On January 17, 1989, the Government filed a response to Respondent's exceptions. On January 24, 1989, Judge Young transmitted the record of these proceedings, including the aforementioned exceptions, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is a physician licensed to practice in the State of Pennsylania. In January 1988, a cooperating individual was interviewed by DEA Task Force Agents. This individual indicated that he was a patient of Respondent and that he was receiving Percocet, a Schedule II narcotic controlled substance, from Respondent because of his drug addiction. On February 16, 1988, the cooperating individual went to Respondent's medical office under the supervision of DEA Task Force Agents. The cooperating individual was equipped with an electronic recording/transmitting device. The cooperating individual told Respondent that he no longer needed drugs to relieve back pain, but that he was hooked on Percocet. The Respondent then issued the cooperating individual a prescription for 40 Percocet. The Administrative Law Judge found that on the date in question, the preponderance of the evidence established Respondent's prescribing of Schedule II controlled substances for no legitimate medical purpose and outside the scope of professional practice.

The Administrative Law Judge also found that three DEA Task Force Agents posing as patients went to Respondent's office and, on each of six occasions, obtained prescriptions for Percocet from Respondent for no legitimate medical purpose. On March 4, 1988, a DEA Agent conducted surveillance outside the building that houses Respondent's medical office. The Agent observed large numbers of persons known to the police to be drug dependent or drug addicted waiting to see Respondent at his office or emerging therefrom. At the hearing, this DEA Agent testified that he visited Respondent's office on three occasions in an undercover capacity using a fictitious name. On two occasions he received a prescription for 40 dosage units of Percocet. The first visit was on March 18, 1988. The DEA Agent went to Respondent's Midland, Pennsylvania office and told Respondent that he fell off a scaffolding a few years ago and hurt his back. Respondent told the Agent that he knew the Agent was using the story just to get Percocet. Respondent then told the Agent that he was going to treat his codeine abuse, because he did not have a back problem, and that he would try to control the amount he took and decrease it over period. Respondent then wrote the Agent a prescription for 40 dosage units of Percocet.

When the DEA Agent returned to Respondent's office on April 18, 1988, again in an undercover capacity, he observed individuals handing in empty prescription vials and receiving prescriptions in return. The Agent then handed the nurse his empty prescription vial. The nurse returned with a prescription for the Agent for 40 dosage units of Percocet. Thus, the Agent received a prescription for Percocet from Respondent without Respondent's having ever made an examination or even spoken to the Agent, who was supposedly his patient.

The Administrative Law Judge found that an additional DEA Task Force Agent, also operating under an assumed name, went to Respondent's medical office on March 1, 1988, and asked the Respondent for something for pain from a car accident that occurred 18 months previously. Respondent asked the Agent

how long he had been hooked on Percocets and why he was taking them. The Agent told Respondent that he enjoyed taking them and they made him relax. Respondent then told the Agent that he was strung out and that Respondent was treating him for his drug problem. Resondent then wrote the Agent a prescription for 40 tablets of Percocet and told him to only take three a day.

This DEA Agent returned to Respondent's medical office two more times. Each time Respondent conducted a cursory medical examination and wrote the Agent a prescription for 40 tablets of Percocet. Respondent issued these prescriptions even after the DEA Agent told Respondent that in addition to the Percocet he was receiving from Respondent, he was also getting Percocet on the streets and taking more Percocets than the Respondent had advised him to take.

The Administrative Law Judge concluded that all these prescriptions for Percocet were written by Respondent for no legitimate medical purpose. At the hearing, Respondent stated that he wrote those prescriptions for Percocet to treat the "patients" narcotic addiction or dependency. Respondent maintained that he did not know such conduct was prohibited by law, and that he was trying, in good faith, to treat these individuals for their dependency. The Administrative Law Judge found that such a purpose, even if it had been the true, honest purpose and intent of Respondent, is beyond what the law permits the Respondent to do. The prescribing of a narcotic to a narcotic dependent person for treatment of his dependency or for maintenacne is not lawful in any case. Although direct administration or dispensing can be lawful, one must have a special DEA Registration to do so. Respondent does not have such a registration. 21 U.S.C. 823(g); 21 CFR 1306.07(a).

The Administrative Law Judge concluded that Respondent's stated purpose was a sham. Respondent did not prescribe these substances to the DEA Agents in good faith for a legitimate medical purpose. Respondent undertook only the most superficial of medical examinations before issuing his customary 40 Percocet prescriptions. Respondent took extremely skimpy histories from these supposed patient addicts before he began "treating" them for narcotic addiction or dependency by prescribing narcotic substances. The undercover Agents were not, in fact, narcotic dependent individuals, and the Respondent could have verified this if he had conducted any tests of their condition. None of the Agents patently represented to Respondent that they were dependent. Indeed, it was the Respondent who insisted that they were narcotic dependent.

The Administrative Law Judge recommended that the Administrator revoke Respondent's Certificates of Registration. The Administrator may revoke a DEA Certificate of Registration if he determines that such registration is inconsistent with the public interest. Included among the factors to be considered in determining the public interest is an individual's experience in dispensing controlled substances and compliance with applicable State, Federal or local law. 21 U.S.C. 823(f). Respondent's conduct was clearly in violation of Federal law, and his experience with regard to dispensing controlled substances was that he was maintaining narcotic addicts. Respondent's conduct was tantamount to dealing drugs under the guise of medical practice. An armed guard stood close by the receptionist as she collected fees, paid in cash, from so called "patients" when they entered the office and before they ever even saw the doctor. The circumstances surrounding Respondent's practices are indicative that his practice was outside the scope of his professional practice. Respondent's behavior leads to the inescapable conclusion that he cannot be permitted to maintain his DEA Registration.

The Administrator adopts the findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. In view of the foregoing facts, it is quite clear that Respondent prescribed Schedule II controlled substances for no legitimate medical purpose and outside the scope of professional practice. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration AG1664742 and BG0906377, previously issued to Leon D. Goggin, M.D., be, and they hereby are, revoked. It is further ordered that any pending applications for renewal of said registrations be, and they hereby are, denied.

At the time the Order to Show Cause and Immediate Suspension was served on Respondent, all controlled substances possessed by Respondent under the authority of his then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until the time for taking appeals has elpased. Accordingly, these controlled substances shall remain under seal until April 3, 1989, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(3).

This order is effective immediately.

Dated: February 27, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-4864 Filed 3-1-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Sterling Drug Inc.

By Notice dated February 17, 1988, and published in the **Federal Register** on February 24, 1988, (53 FR 5480), Sterling Drug Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of pethidine (meperidine) (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Administrator hereby orders that the application submitted by the above firm for registration as bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 24, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-4865 Filed 3-1-89; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Reestablishment of the 1989 Aggregate Production Quota for Methylphenidate

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of an established 1989 aggregate production quota.

SUMMARY: This notice reestablishes the 1989 aggregate production quota for methylphenidate taking into

consideration the Administrator's order to recalculate the 1986 aggregate production quota.

DATE: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of DEA pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On December 16, 1988, a notice was published in the **Federal Register** (53 FR 50591) stating the DEA Administrator's ruling concerning the 1986 quotas for methylphenidate. As stated in this notice, the Administrator has carefully reviewed the entire record, which included the opinion and recommendations of the Administrative Law Judge, the findings of fact and conclusions of law proposed by the parties, the response to those exceptions and motions filed by all counsels, all the exhibits and affidavits and all of the transcripts of the hearing sessions. Based on findings and conclusions stated in the notice, the Administrator has ordered the DEA staff to "redetermine the 1986 aggregate production quota for methylphenidate so as to provide for medical, scientific, research and industrial needs of the United States, for lawful export requirements and for the establishment and maintenance of reserve stock." Therefore, in this notice, DEA reestablishes the aggregate production quota for methylphenidate for 1989 which will permit the bulk manufacturers of methylphenidate to produce additional amounts of this controlled substance.

In determining the below listed reestablished 1989 aggregate production quota, the DEA staff considered the actual 1986 sales and year-end inventory, the amount manufactured by the companies in 1986 and in an inventory allowance of 50 percent of net disposals as per 21 CFR 1303.24(c) for the manufacturers of methylphenidate.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1989 aggregate production quota for methylphenidate, expressed in grams of anhydrous base, be established as follows:

Basic Class	1989 reestablished aggregate production quota (grams)
Schedule II: Methylphenidate	2,527,000

John C. Lawn

Administrator, Drug Enforcement Administration.

Dated: February 14, 1989.

[FR Doc. 89–4866 Filed 3–1–89; 8:45 am]

BILLING CODE 4410–09–M

LIBRARY OF CONGRESS

American Folklife Center, Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94–463.

DATE: March 3, 1989, 9:00 a.m. to 1:00 p.m.

ADDRESS: Whittall Pavilion, Jefferson Building, Library of Congress, 10 First Street, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 707–6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94–201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: February 24, 1989.

Rhoda W. Canter,

Associate Librarian for Management.

[FR Doc. 89–4900 Filed 3–1–89; 8:45 am]

BILLING CODE 1410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89–14)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Space Physics Subcommittee.

DATE AND TIME: March 15, 1989, 9 a.m. to 5 p.m., and March 16, 1989, 9 a.m. to 5 p.m.

ADDRESS: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley Shawhan, Code ES, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1676).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Space Physics Subcommittee provides advice to the Space Physics Division and to the SSAAC on operation of the Space Physics Program and on formulation and implementation of the Space Physics research strategy. The Subcommittee will meet to discuss the status of the Results of Fiscal Year 1989 NASA Research Announcements (NRA), Mission Operations and Data Analysis Plans, Strategic Planning, Budget Priorities, and future plans for the Subcommittee. The Subcommittee is chaired by Dr. George Siscoe and is composed of 18 members. The meeting will be open to the public up to the capacity of the room (approximately 35 including Subcommittee members).

Type of Meeting: Open.

Agenda:

Wednesday, March 15

9 a.m.—Introduction and Opening Remarks.

11 a.m.—Mission Operations and Data Analysis Plans.

1:30 p.m.—US/USSR Joint Working Group Planning.

3:30 p.m.—Strategic Plan: Orbiting Solar Laboratory (OSL), future mission candidates, and active space plasma experiments.

5 p.m.—Adjourn.

Thursday, March 16

9 a.m.—Budget Priorities.

1 p.m.—Issues Relating to Health of the Space Physics Community.

2 p.m.—Subcommittee Discussion and Future Planning.

5 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–4792 Filed 3–1–89; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Environmental Assessment and Finding of No Signficiant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17 issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The amendments would revise Technical Specification (TS) 3/4.7.13 "Groundwater Level" and referenced Table 3.7–7 "Groundwater Level Monitors." TS 3.7.13 presently requires that groundwater level be maintained at specified levels as determined from eleven interior and exterior groundwater level monitors stituated in or near the Reactor Buildings, the Auxiliary Building and the Diesel Generator Buildings. The proposed change would delete the groundwater monitors for the Reactor Buildings and the Diesel Generator Buildings, leaving only the five monitors for the Auxiliary Building. The change would introduce a single alarm level (731 feet MSL) for the Auxiliary Building monitors, and would change the unit shutdown requirements from one alarmed monitor to three alarmed monitors out of a total of five for the Auxiliary Building. Duke Design Engineering has performed analyses which show that the Reactor Buildings and Diesel Generator Buildings can withstand groundwater elevation corresponding to plant grade, 760 feet MSL (which is also the full pond level for Lake Norman) and that, therefore, it is not necessary to continue monitoring the groundwater levels for these particular buildings. Elevation 737 feet MSL was calculated to be the maximum level that groundwater could rise before overturning due to buoyancy would begin for the Auxiliary Building. To avoid reaching this level, the proposed TS would require that if groundwater level exceeds elevation 731 feet MSL as indicated by 3 of 5 monitor alarms, and cannot be reduced in one hour, the McGuire Station (both units) must be in at least hot standby within 6 hours, and hot shutdown within the next 6 hours, and cold shutdown within the following 30 hours. The associated surveillance requirements would be changed to require that: (1) The groundwater level be demonstrated each shift to be below elevation 731 feet MSL and (2) the groundwater level monitor instrument/loop for the specified locations be demonstrated operable annually by loop calibration or operational test.

The proposed action is in accordance with the licensee's application for amendments dated January 27, 1988, which replaced a previous related application dated October 31, 1984.

The Need for the Proposed Action

The proposed change is needed to eliminate an inconsistency between the "alert" levels needed to satisfy existing TS 3.7.13 and the detection capabilities of the interior monitoring instruments as actually installed at McGuire. The current TS requires specified action at an "alert" level that is 2 feet above floor level. As installed, the interior monitors are located in the exterior walls at 2 feet 8 inches above floor level and the pressure sensors are at 3 or 4 feet above floor level. Thus, the lowest possible level alarm for these monitors is about 3 or 4 feet above floor level. The proposed action would eliminate the present inconsistency by substituting a new alarm level at 731 MSL as the basis for action. The proposed change would also avoid needless shutdown of the reactor at groundwater levels or localized increases for which licensee's design analysis have demonstrated no adverse effect to structures.

Environmental Impacts of the Proposed Action

Since the lower elevations of some Category 1 structures at the McGuire Nuclear Station are below the natural water table, a permanent groundwater dewatering (drainage) system was installed during initial construction to lower the water table. The groundwater system relieves subsurface hydrostatic loadings by collecting groundwater in wall drains, basemat flow channels and sumps, thereby creating a depression in the water table in the vicinity of the powerblock. This protects the structures by limiting structural stresses exerted upon the Auxiliary and Reactor Buildings due to hydrostatic pressures and uplift forces as a result of high groundwater levels. During normal operation of the underdrain system, groundwater level is maintainted at or below elevation 712 feet MSL in the Auxiliary Building areas and elevation 717 feet MSL in the Reactor Building areas. Groundwater collected in the underdrain sumps is pumped to the Yard Storm Drain System or to the Turbine Building sumps via sump pumps located

in the Auxiliary Building and is subsequently discharged to the Catawba River by way of the Conventional Waste Water Basin.

The proposed changes do not alter the design of the dewatering system or its function. Therefore, the groundwater levels normally maintained by this system and groundwater hydrology for the site are not changed. Similarly, the quantity and quality of groundwater collected and discharged from the station are not changed.

The purpose of the TS is to ensure that groundwater levels are monitored and preventing from rising to a potential failure to limit for the Auxiliary Building (such as could result from gross failure of the undrain system, followed by prolonged inattention). The potential failure limit is based on engineering calculations indicating that the Auxiliary Building is susceptible to overturning due to buoyancy at elevation 737 feet MSL. Under the requirements of the proposed TS change, if groundwater level at the Auxiliary Building exceeds elevation 731 feet MSL as indicated by 3 of 5 specified groundwater monitor alarms, and cannot be reduced in 1 hour, the McGuire units would be placed in a cold shutdown condition. Other analyses have determined that the Reactor Buildings and the Diesel Generator Buildings are designed to withstand hydrostatic loadings due to groundwater levels up to top of grade (760 feet MSL) which is also the full pond level for nearby Lake Norman. Therefore, no TS requirement is needed regarding groundwater for the Reactor Buildings or Diesel Generator Buildings.

The staff has reviewed the proposed changes and has found them to be based upon conservative analyses of limiting structural concerns due to groundwater, and to provide for reliable and timely indications of the need for actions to place the facility in a safer condition before groundwater levels sufficient to cause these limting structural concerns could be reached. The requirement to be in cold shutdown before groundwater levels at structural limits can be reached is consistent with the existing TS. Thus, the proposed change does not increase the probability or consequences of accidents.

The groundwater system is a non-radiological system. The proposed change involves no adverse change in the types or amounts of radiological (or non-radiological) effluents that may be released offsite, and no increase in allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant adverse environmental impact.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and could result in reduced operational flexibility and needless shutdowns.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Relating to Operation of the William B. McGuire Nuclear Station, Units 1 and 2," dated April 1976 or its addendum dated January 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated January 27, 1988 and a previous application of October 31, 1984, which it replaced. Also see the licensee's letters dated April 26, June 21, and August 25, 1988, which provided revised or supplemental information in support of the January 27, 1988 application. A detailed description of the groundwater system can be found in McGuire FSAR section 2.4.13. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 24th day of February 1989.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-4859 Filed 3-1-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 9-11, 1989, in Room P-110, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the **Federal Register** on February 22, 1989.

Thursday, March 9, 1989

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.–12:00 Noon: Peach Bottom Nuclear Power Station (Open)—The Committee will review and report on the proposed restart of the Peach Bottom Nuclear Power Station.

1:00 p.m.–2:30 p.m.: Containment Design Criteria (Open)—Discuss proposed ACRS activities regarding the development of containment design criteria for future nuclear power plants.

2:45 p.m.–3:15 p.m.: Future ACRS Activities (Open)—The membes will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

3:15 p.m.–3:45 p.m.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the status of assigned ACRS subcommittee activities by designated subcommittees.

3:45–5:15 p.m.: Severe Accident Research Program Plan (Open)—Review and report on proposed NRC Severe Accident Research Program Plan.

5:15 p.m.–6:00 p.m.: Appointment of ACRS Members (Open/Closed)—Discuss the status of appointment of ACRS members and proposed plans for selection of future ACRS members.

Portions of this session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Friday, March 10, 1989

8:30 a.m.–9:30 a.m.: NRC Safety Goal Policy (Open)—Discuss proposed ACRS comments/recommendations regarding the use of NRC Safety Goal Policy for evaluating the effectiveness of NRC

regulations in protecting the public health and safety.

9:30 a.m.–12:00 noon: Leak-Before-Break Technology (Open)—Discuss proposed NRC Commission policy statement regarding additional application of the leak-before-break technology to emergency core cooling systems design and environmental qualification of components.

1:00 p.m.–2:30 p.m. Meeting with the NRC Executive Director for Operations (Open)—The members will discuss the plans for completion and use of NUREG–1150, Reactor Risk Reference Document, and other matters of mutual interest.

2:45 p.m.–5:30 p.m.: Preparation of ACRS Reports (Open)—Discuss proposed ACRS reports to NRC regarding items considered during this meeting.

Saturday, March 11, 1989

8:30 a.m.–12:00 noon: Preparation of ACRS Reports (Open)—Discuss proposed ACRS reports to NRC regarding items considered during this meeting.

1:00 p.m.–2:30 p.m.: Miscellaneous (Open)—Continue discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Date: February 24, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–4858 Filed 3–1–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–425A]

Georgia Power Co., et al; No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the previous antitrust operating license review of Unit 1 of Plant Vogtle by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the Plant Vogtle 1 operating license to Georgia Power Company, *et al.*, the staffs of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as "staff," have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the Plant Vogtle Unit 1 antitrust operating license review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in Georgia, the events relevant to the Plant Vogtle Unit 1 operating license review, as well as the events that have occurred subsequent to the Plant Vogtle Unit 1 operating license review.

The conclusion of the staff's analysis is as follows:

Section 105c of the Atomic Energy Act of 1954, as amended, provides for pre-licensing antitrust reviews of commercial power reactors at the construction permit and operating license stages of the licensing process. The antitrust operating license review is not intended as a *de novo* review but is focused only on those activities of the licensee(s) that have occurred since the completion of the construction permit review.

This concept of reviewing only significant *changes* in the licensee's activities at the operating license stage has been applied by the staff to reviews of multiunit plant applications. For those plants with multiple reactor licenses, the staff conducts separate antitrust reviews for each reactor when the reactors are licensed on a delayed or staggered schedule, i.e., when the reactors are scheduled to be licensed eighteen months or more apart.

As indicated *supra*, the antitrust operating license review of Unit 1 of Plant Vogtle was completed in November of 1986 and the reactor was licensed in March of 1987. Unit 2 of Plant Vogtle is scheduled to be licensed in March of 1989 and in light of the two-year lapse since the previous review of the licensees, the staff initiated a separate antitrust review of Unit 2—with the focus of the review on any significant changes in the licensees' activities since the completion of the previous review in 1986.

The changes in the licensees' activities since the previous antitrust review have been largely the result of policies and agreements that were intitiated as a result of license conditions placed upon the principal licensee, Georgia Power Company, during the antitrust construction permit review. The staff noted in its operating license review of Unit 1 of Plant Vogtle, that the competitive process in the Georgia electric bulk power industry had improved markedly. Moreover, the staff attributed this positive change to the successful implementation of the antitrust license conditions imposed by the Commission. It was also noted that power systems throughout Georgia and adjacent states were better able to control their own power supply destinies by taking advantage of new power supply options and alternatives made available by a more competitive bulk power supply system.

The staff's review of changes in the licensees' activities since 1986 indicates that the procompetitive effects identified during the Votgle 1 OL review are continuing. Various energy exchange agreements among industry players have been entered into and activated, thereby stimulating more efficient operations among a wide variety of industry players throughout the southeastern portion of the country. Georgia Power Company is providing power and energy transactions to various power systems in Georgia as well as Florida. The integrated transmission system that emerged from the Commission's antitrust construction permit review of Plant Vogtle in the mid-1970's allows for ownership of portions of the Georgia transmission grid by

all power systems in the state and this transmission arrangement has been cited by industry observers as a model for joint transmission agreements in other areas of the country.

The staff believes the competitive stimuli introduced during the antitrust construction permit review are continuing to promote competition and enhance the competitive process throughout the Georgia electric bulk power market. The staff does not believe that there have been any "significant changes" in the licensees' activities since the previous antitrust review and recommends that no affirmative significant change determination be made pursuant to the operating license for Unit 2 of Plant Vogtle.

Based upon the staff's analysis, it is my finding that there have been no "significant changes" in the licensees' activities or proposed activities since the completion of the previous antitrust review.

Signed on February 28, 1989 by Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation.

Although the Atomic Energy Act of 1954, as amended, does not address a specific period for public comments pursuant to reevaluation of the Director's Finding, the Commission has adopted rules that normally allow for a 30 day comment period. The staff has determined that in the instant proceeding an exemption from the comment period from 30 days to 15 days should be granted to avoid delay in the issuance of the operating license for Plant Vogtle Unit 2. Moreover, the staff has determined that this exemption will not present an undue risk to the public health and safety nor adversely affect any potential interested party's ability to provide comments to the Commission.

Any person whose interest may be affected by this finding, my file, with full particulars, a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 15 days of the initial publication of this notice in the **Federal Register.** Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as information about facts or events antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, this 26th day of February 1989.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Policy Development, and Technical Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 89-4984 Filed 3-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-294]

Michigan State University; Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of Orders authorizing Michigan State University (the licensee) to dismantle the reactor facility and dispose of the component parts, and termination of Facility License No. R-114, in accordance with the licensee's application dated January 20, 1989.

The first of these Orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By April 3, 1989, the licensee may file a request for a hearing with respect to issuance of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the

petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Charles L. Miller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ms. Mary Elizabeth Kurz, General Counsel, Michigan State University, 494 Administration Building, East Lansing, Michigan 48824–1046, attorney for licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petitioner and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated January 20, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 23rd day of February 1989.

For The Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–4860 Filed 3–1–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co.; San Diego Gas and Electric Co.; San Onofre Nuclear Generating Station, Unit No. 1 Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated February 17, 1989.

The proposed amendment seeks approval to operate during Fuel Cycle 10 with degraded fasteners in the reactor vessel thermal shield. The proposed amendment would provide a thermal shield monitoring program to monitor the condition of the thermal shield throughout the fuel cycle (approximately eighteen months).

Proir to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 3, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropirate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed findings of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 23rd day of February 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–4861 Filed 3–1–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–602]

University of Texas; Order Extending Construction Completion Date

The University of Texas is the current holder of Construction Permit No. CPRR–123, issued by the Nuclear Regulatory Commission on June 4, 1985, for construction of the University of Texas TRIGA Mark II research reactor. The reactor facility is presently under construction at the Balcones Research Center in Austin, Texas.

On October 17, 1988, the University of Texas (UT or the applicant) filed a request for an extension of the completion date from December 31, 1988 to April 30, 1989. On November 23, 1988, the applicant requested a revision of the date requested in the earlier submittal to December 31, 1989. The extension has been requested because construction has been delayed by the default of the General Contractor in charge of the project. The General Contractor was found in default because of its inability to meet the construction schedule. The completion of the project is now the responsibility of the bonding company. The facility exclusive of the reactor structural and instrumentation components is estimated to be 95 percent complete.

Good cause has been shown for the delay; the cause is beyond the control of the applicant; and the requested extension is for a reasonable period, the basis for which are set forth in the staff's evaluation of the request for extension.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment (54 FR 7897, February 23, 1989).

The NBC staff safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555.

It is hereby ordered, That the latest completion date for Construction Permit No. CPRR–123 is extended from December 31, 1988 to December 31, 1989.

For The Nuclear Regulatory Commission.

Date of Issuance: February 24, 1989.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–4862 Filed 3–1–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on January 25, 1989 (54 FR 15). Individual authorities established or revoked under Schedule A, B, or C between January 1, 1989, and January 31, 1989, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A authorities were established or revoked during January.

Schedule B

No Schedule B authorities were established or revoked during January.

Schedule C

Department of Commerce

One Director, Office of Private Sector Initiatives to the Director for the Office of Business Liaison. Effective January 19, 1989.

Department of Energy

One Staff Assistant to the Assistant Secretary for Defense Programs. Effective January 10, 1989.

One Executive Assistant for Business and Education Programs to the Director of Minority Economic Impact. Effective January 18, 1989.

One Staff Assistant to the Assistant Secretary for Fossil Energy. Effective January 18, 1989.

One Confidential Assistant (Secretary) to the Administrator, Economic Regulatory Administration. Effective January 24, 1989.

One Technical Advisor to a Member of the Commission. Effective January 25, 1989.

Department of the Interior

One Special Assistant to the Director, National Park Service. Effective January 18, 1989.

One Special Assistant to the Assistant Secretary for Policy, Budget, and Administration. Effective January 19, 1989.

One Deputy to the Director of Security and Drug Enforcement. Effective January 19, 1989.

One Staff Assistant to the Director for Geological Survey. Effective January 25, 1989.

One Confidential Assistant to the Director, Office of Surface Mining Reclamation and Enforcement. Effective January 26, 1989.

Department of Labor

One Staff Assistant to the Secretary of Labor. Effective January 18, 1989.

Department of State

Three Special Assistants to the Secretary of State. Effective January 23, 1989.

One Staff Assistant to the Secretary of State. Effective January 23, 1989.

One Special Assistant to the Secretary of State. Effective January 27, 1989.

Department of the Treasury

One Confidential Assistant to the Secretary of the Treasury. Effective January 18, 1989.

Two Special Assistants to the Secretary of the Treasury. Effective January 19, 1989.

Commodity Futures Trading Commission

One Administrative Assistant to the Chairman. Effective January 19, 1989.

Federal Maritime Commission

One Confidential Assistant to the Commissioner. Effective January 10, 1989.

Interstate Commerce Commission

One Government Affairs Assistant to the Director, Office of Governmental and Public Affairs. Effective January 25, 1989.

National Endowment for the Humanities

One Special Assistant to the Chairman. Effective January 3, 1989.

Small Business Administration

One Special Assistant to the Regional Administrator. Effective January 18, 1989.

Veterans Administration

One Confidential Assistant to the Administrator of Veterans Affairs. Effective January 26, 1989.

One Confidential Assistant to the Administrator of Veterans Affairs. Effective January 27, 1989.

Authority: 5 U.S.C. 3301, 3302; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management

Constance Horner,
Director.

[FR Doc. 89–4784 Filed 3–1–89; 8:45 am]
BILLING CODE 6325–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, March 15, 1989, at 10:00 a.m.

ADDRESS: The meeting will be held at the Washington Project for the Arts, Jenifer Building 400 7th Street, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Date: February 23, 1989.

M. J. Brodie,
Executive Director.

[FR Doc. 89–4820 Filed 3–1–89; 8:45 am]
BILLING CODE 7630–01–M

COMMISSION ON RAILROAD RETIREMENT REFORM

Meeting

Background

The Commission on Railroad Retirement Reform was created by Pub. L. 100–203, signed on December 22, 1987. The purpose of the Commission is to conduct a comprehensive study of the issues pertaining to the long-term financing of the railroad retirement system and the system's short-term and long-term solvency. The Commission is to submit a report containing a detailed statement of it findings and conclusions together with recommendations to the Congress not later than October 1, 1990. The Commission is composed of seven members—four appointed by the President, one by the Speaker of the House of Reprsentatives, one by the President pro tempore of the Senate, and one by the Comptroller General.

This notice announces the first meeting of the Commission.

Time: 9:00 a.m.–4:00 p.m. March 20, 1989.

Place: Railway Labor Executives Association, 400 First Street NW., 8th Floor, Washington, DC.

Status: Open meeting except for initial 90 minutes which will be closed to discuss matters exempted from public disclosure pursuant to subsection (c) of section 552b of title 5, United States Code.

Contact: Dennis Condie Telephone (202) 472–9058.

Robert J. Myers,
Chairman, Commission on Railroad Retirement Reform.

Date: February 21, 1989.

[FR Doc. 89–4821 Filed 3–1–89; 8:45 am]
BILLING CODE 6820–63–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26568; File No. SR–AMEX–88–21]

Self-Regulatory Organization; American Stock Exchange, Inc. Order Partially Approving Proposed Rule Change Relating to Obligation of Registered Option Traders

On August 26, 1988, the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify certain obligations of Registered Option Traders ("ROTs").

The proposed rule change was noticed in Securities Exchange Act Release No. 26066 (September 7, 1988) 53 FR 35571 (September 14, 1988). No comments were received on the proposed rule change.

The Exchange proposes, among other things, to narrow the maximum permissible spread between bids and offers for any option series and to eliminate the wider spread differentials that currently apply to the longest term options. The present rule requires ROTs to bid or offer for options contracts within certain bid-ask differentials based on the value of the option contract.[3] The maximum allowable differential increases as the dollar value of the bid increases. The Exchange proposes for options, where the underlying security is a stock, to reformulate the permissible bid-ask differentials for those option contracts with a prevailing bid of $10 or less. Specifically, the Exchange proposes to permit bidding and offering so as to create differences of no more than ¼ of $1 between the bid and offer for each option contract for which the prevailing bid is $1 or less, no more than ⅜ of $1 where the prevailing bid is more than $1 but does not exceed $5, and no more than ½ of $1 where the prevailing bid is more than $5 but does not exceed $10. These changes will result in narrower spreads for bids and offers between ½ of $1 and $5.

The Exchange also proposes to clarify and modify certain obligations of ROTs set forth in Exchange Rule 958. First, the Exchange proposes to clarify that ROTs,

[1] 15 U.S.C. 78s (b)(1) (1982).

[2] 17 CFR 240.19b–4 (1987).

[3] The proposal is based on the prevailing bid, whereas the present rule is based on the last transaction.

when in trading crowds in other than a floor brokerage capacity, are required to make competitive bids and offers as reasonably necessary to contribute to the maintenance of fair and orderly markets. Additionally, the Exchange proposes that a ROT, when establishing or increasing an options position for any account in which he has an interest, must initiate such transactions in trading areas [4] for those transactions to be considered registered trader transactions.[5] Moreover, the Exchange proposes to require ROTs, prior to executing an order in an account in which they have an interest, to announce whether the order is a "trader opening" or "trader closing" order.[6]

The Exchange believes that the proposed amendments will improve options price continuity, result in more liquid markets and clarify the obligations of ROTs to maintain a fair and orderly market.

The Commission finds that the above-described portions of the proposed rule change are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6.[7] Specifically, the Commission finds that these proposals are consistent with section 6(b)(5) of the Act because narrowing the maximum allowable bid-ask differentials for options contracts bid between $0.50 and $5 and eliminating the wider spread differentials for the longest term options will result in improved price continuity and tighter, more liquid markets. The Commission also believes that expressly stating the obligation of ROTs to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market, reinforces the market making responsibilities attendant to ROTs under section 11 of the Act. Moreover, the Commission believes the proposed rule changes regarding the initiation of ROT transactions and the declaration of whether a ROT order is a "trader opening" or "trader closing" order will assist the Exchange in the monitoring and surveillance of its current rules.

[4] A trading area is defined as the areas designated by the Exchange for trading stocks, bonds, options and other securities.

[5] A ROT engaged in a registered trader transaction is designated as a market maker on the Exchange for all purposes under the Securities Exchange Act of 1934 and is entitled to benefits such as specialist margin treatment.

[6] Commentary .07 of AMEX Rule 111 provides that "a Registered Trader, in establishing or increasing a position, may not retain priority over or have parity with an off-Floor order."

[7] 15 U.S.C. 78f (1982).

The Exchange also proposed, in its rule filing, the establishment of rules regarding the in person trading requirements for ROTs. The Commission is not taking action on these portions of the Exchange proposal at this time.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved, solely as to the matters specified herein.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: February 23, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-4886 Filed 3-1-89; 8:45 am]

BILLING CODE 8010-01-M

[8] 15 U.S.C. 78s (b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-26570; File No. SR-CBOE-89-04]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating To Bid Ask differentials

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 2, 1989, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule 6.20 (a) through (c) No change.

* * * Interpretations and Policies:

.01 through .03 No change.

.04 The activities which may impair the maintenance of a fair and orderly market or impair public confidence in the operations of the Exchange, include but are not limited to the following:

(i) Effecting or attempting to effect a transaction with no public outcry in violation of Rule 6.43 or 6.74;

(ii) Failure of a Market-Maker to respond to a request for a market by an Order Book Official pursuant to Rule 7.5;

(iii) Failure of a Market-Maker to bid or offer within the ranges specified by Rule 8.7(b);

(iv) Failure to adequately supervise an employee to insure his compliance with Exchange Rule 6.20(c);

(v) Failure to abide by a determination of Floor Officials; [and]

(vi) Refusal to provide information requested by a Floor Official acting in his official capacity; *and*

(vii) Failure to abide by the provisions of Rule 8.51.

.05 Two Floor Officials may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of any of the following: (i) Rule 6.43 (manner of bidding and offering), (ii) Rule 6.45 (priority of bids and offers), (iii) Rule 6.46 (transactions outside the book's last quoted range), [or] (iv) Rule 6.47 (priority on split price transactions, *or (v) Rule 8.51 (trading crowd firm disseminated market quotes.*

.06 No change.

Rule 6.73 (a) through (c) No change.

* * * Interpretations and Policies:

.01 No change

.02 No change

.03 Pursuant to Rule 6.73(a) a Floor Broker's use of due diligence in handling an order is applicable to the provisions of Rule 8.51 in that it includes taking the necessary measures to ensure the proper execution of an order as it pertains to the executable quantity for a trading crowd's firm disseminated market quote. Due diligence also shall apply to the representation in the crowd of an order as described in Rule 8.51 Interpretations and Policies .02.

.04 Pursuant to Rule 6.73(a) a Floor Broker's use of due diligence in handling an order shall include the immediate and continuous representation of market or marketable orders at the trading station where the option class represented by the order is traded.

Chapter VIII

Market-Makers, [and Block Positioners] *Trading Crowds and*

Modified Trading Systems

Section A: Market-Makers

Obligations of Market-Makers

Rule 8.7. (a) through (b) (iii) no change.

(iv) To price options contracts fairly by, among other things, *bidding* and/or offering so as to create differences of no more than ¼ of $1 between the bid and offer for each option contract for which the bid [is $1 or less] *is less than $2,* no more than ⅜ of $1 where the bid is [more than $1] *at least $2* but does not exceed $5, no more than ½ of $1 where the bid is more than $5 but does not exceed $10, no more than ¾ of $1 where the bid is more than $10 but does not exceed $20, and no more than $1 where

the bid is more than $20, provided that the *Market Performance Committee* [Floor Procedure Committee] may establish differences other than the above for one or more options series. The bid/ask differentials stated above shall not apply [to option series which are ten or more points in-the-money] *to in-the-money series where the underlying securities market is wider than the differentials set forth above.* For these series, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security. [During the last week of trading preceding expiration, the bid/ask differentials on expiring in-the-money options may be as wide as the quotation in the primary market of the underlying security.]

Rule 8.7(c) No change.

* * * Interpretations and Policies:

.01 to .04 no change.

.05 Unless an option class is exempted by the Market Performance Committee, under normal market conditions a Market-Maker's bid or offer for a series of options of unspecified size is for five contracts *except that a Market-Maker may be compelled to buy or sell a specific number of contracts at the disseminated bid or offer pursuant to his obligations under Rule 8.51.*

.06 to .07 no change

[Rule 8.12] *Rule 8.60 Renumbered*

[Rule 8.13] *Rule 8.80 Renumbered*

Section B: Trading Crowds

Rule 8.50 Definitions

The term "trading crowd" means all market-makers who hold an appointment in the options classes at the trading station where such trading crowd is located and all market-makers who regularly effect transactions in person for their market-maker account at that station, but generally will consist of the individuals present at the trading station.

Rule 8.51 Trading Crowd Firm Disseminated Market Quotes

The Exchange will pilot a firm disseminated quote program. The pilot will be monitored and enforced by the Market Performance Committee ("MPC"). The expiration months and strikes which shall be subject to the pilot will be determined at the discretion of the MPC.

(a) Only non-broker dealer customer orders shall be entitled to an execution pursuant to the provisions of this rule.

(b) At all times other than during rotation, a trading crowd is required to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading station where the particular option class is located for trading unless a "fast market", as defined in Rule 6.6, has been declared in a class of options.

(c) On a case by case basis, the MPC may grant exemptions to the provisions of this rule for either a class or series within a class if, in their determination, the individual situation warrants such action. Additionally, MPC floor officials may determine that an exception to the rule is warranted, on a case by case basis, upon their determination that an obvious error occurred in the posting of the disseminated market quote.

* * * Interpretations and Policies:

.01 If the disseminated bid (offer) is on behalf of an order represented by a Floor Broker or the OBO and is for less than ten contracts the trading crowd is obligated to buy or sell the necessary number of contracts needed to make the disseminated quote firm for ten contracts.

.02 Where a Floor Broker or OBO has caused a bid or offer to be disseminated and the order is subsequently filled or cancelled, the Floor Broker or OBO will be responsible for causing such disseminated bid or offer to be removed. Failure to do so will result in the Floor Broker or OBO being responsible for satisfying the firm disseminated quote commitment. A Market-Maker who has caused a bid or offer to be disseminated is equally responsible for removing such bid or offer when he leaves the trading crowd.

.03 Market-Maker orders for less than ten contracts that are represented in the crowd by a Floor Broker should not be reflected in the displayed market quote. However, a Floor Broker remains obligated to use due diligence in the representation of an order as set forth in Rule 6.73.

.04 The MPC Floor Officials, pursuant to Rule 6.20(b) and Interpretations and Policies .04 thereunder, may impose a fine on members of the trading crowd for violations of this Rule and its Interpretations and Policies.

Rule 8.60 See prior rule 8.12

Section C: Modified Trading Systems

Rule 8.80 See prior rule 8.13

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The rule changes as proposed herein address three different areas. The first involves the tightening of markets for option series where the bid is less than $2 such that the bid/offer differential may not exceed ¼ of $1. As addressed in SR–CBOE–88–15, where the market quote differential was lowered to ⅜ of $1, the Exchange believes that since options in this price range are favored by a significant number of public investors, the narrowing will result in improved price continuity and more liquid markets. The Exchange intends to extend the prior exemption afforded to options which are ten dollars or more in-the-money to all in-the-money options. Therefore, when a market quote differential in the underlying security is wider than those allowed in options, the market differentials in these series can parallel that of the underlying but not exceed it.

To support extending the current exemption to all in-the-money series, the Exchange analyzed the impact of such a proposal. On average, there are 2600 series which would be impacted because they trade below the current 10 or more poins in-the-money exemption. The Exchange has prepared a chart (Exhibit A) which reflects the various price ranges of these series and their respective delta values. A minimal number (346 or 13%) of existing series have a delta of less than .50 and, therefore, would be granted an exemption to trade at the same bid-ask differential as their underlying security under the proposed rule changes.

The second area addresses a format change to Chapter VIII of the Exchange Rules. The chapter will be divided into three sections, one each for market makers, trading crowds and modified trading systems. As such, current Rules 8.12 and 8.13 will become Rules 8.60 and 8.80 respectively.

The final area addressed by the proposed rule changes represents the Exchange's intent to create a pilot program whereby a disseminated market quote would become a firm quote for ten contracts by a trading crowd. As a result of the pilot as

described in proposed Rules 8.50 and 8.51, the Exchange has imposed upon Floor Brokers in Rule 6.73 Interpretations and Policies .03 and .04 certain obligations relating to due diligence in the handling of orders subject to execution under the pilot. As stated, Floor Brokers can be made responsible for disseminated markets in such instances. The pilot also places additional responsibility on individual market makers who make unspecified bids or offers, as noted in Rule 8.7 Interpretations and Policies .05, when they are the only representative of a trading crowd.

The Exchange believes that the proposed rule changes are consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder. In particular, the proposed rule changes are consistent with section 6(b)(5) of the Exchange Act, such that they promote just and equitable principles of trade and are designed to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons forso finding or (ii) as to which the self-regulatory organization consents, the commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other that those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 23, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1989.

Jonathan G. Katz,

Secretary.

Exhibit A

SERIES PER PRICE RANGE WHICH ARE AT-THE-MONEY OR IN-THE-MONEY

Price	# Series
1/16 to 1	112
1 1/16 to 1 15/16	286
2 to 4 7/8	1260
5 to 9 7/8	935

SERIES PER DELTA VALUE AT EACH PRICE RANGE

Price	Delta							
	20–29	30–39	40–49	50–59	60–69	70–79	80–89	90+
1/16 to 1		4	22	45	24	14	4	
1 1/16 to 1 15/16		4	47	54	101	44	25	10
2 to 4 7/8	6	84	155	254	256	224	239	42
5 to 9 7/8 (Only 23 which were below 50 delta out of 935)								
10 or more (Only 25 which were below 50 delta out of 464)								

[FR Doc. 89-4887 Filed 3-1-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26569; File No. SR-GSCC-88-3]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Government Securities Clearing Corporation Regarding the Submission of Financial Information

On December 22, 1988, the Government Securities Clearing Corporation ("GSCC") filed a proposed rule change (File No. SR-GSCC-88-3) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] to authorize GSCC to require applicants and members to submit financial information to GSCC. On January 19, 1989, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] No comments have been received on this proposal. This Order approves the proposal.

I. Description

The proposal amends GSCC's rules to authorize GSCC to require applicants for membership and current GSCC members to submit certain information that GSCC plans to use to assess each applicant's and member's financial responsibility and operational capacity. Each applicant and member must submit, among other things, the financial statements and the reports filed with its appropriate regulatory agency ("ARA") and a copy of its latest certified financial statement.

Each applicant must submit a copy of its certified financial statement prepared by its independent certified public accountant accompanied by a statement signed by the applicant's chief financial officer or chief executive stating that no material adverse changes have occurred since the date of the most recent report submitted to GSCC. A registered broker-dealer or a government securities broker-dealer applicant, also must submit its three most recent Form X-17A-5 Financial and Operational Combined Uniform Single Reports ("FOCUS") or its three most recent Form G-405 Reports on Finances and Operations ("FOGS"). A bank applicant must submit its three most recent Consolidated Reports of Condition and Income ("Call Reports"). An applicant (other than a broker-dealer or a bank) which is subject to state or federal regulation must submit the three most recent reports submitted to its regulatory authority. An applicant which is not subject to state or federal regulation must submit copies of its three most recent unaudited quarterly financial statements, accompanied by a certificate of the applicant's chief financial officer that the financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial position of the applicant and the results of its operations for the period covered. An applicant which proposes to satisfy any of GSCC's financial requirements by means of a guaranty of its obligations by its parent company, must submit to GSCC the parent company's financial statements, FOCUS reports, FOGS reports, Call Reports or other comparable reports submitted to its ARA.

The proposal requires each GSCC member to submit to GSCC periodically the same reports (listed above) that each applicant must submit to GSCC. For example, a broker-dealer member must submit FOCUS reports or FOGS reports to GSCC promptly following its filing with its ARA. It also must submit its annual financial statements, certified without qualification by its independent certified public accountant and accompanied by a certificate prepared by its chief financial officer that the member has not guaranteed the obligations of any other person, and is not subject to any other contingent liabilities not set forth in the financial statements.

II. GSCC's Rationale

GSCC believes the proposal is consistent with section 17A of the Act because it will enable GSCC to require applicants and members to submit financial information to GSCC. GSCC plans to use this information to assess each applicant's and member's financial responsibility and to evaluate potential risks to GSCC. GSCC believes that it needs this information to assure the safeguarding of securities and funds under its control or for which it is responsible and to promote the prompt and accurate clearance and settlement of securities transactions.

III. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act. Specifically, the Commission agrees with GSCC that the proposed rule change will assist GSCC in fulfilling its responsibility to facilitate the prompt and accurate clearance and settlement of securities and the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. In addition, the Commission believes that the proposal should aid GSCC's efforts in developing appropriate membership and applicant standards.

When the Commission granted GSCC temporary registration as a clearing agency, it exempted GSCC from section 17A(b)(3)(B) and seciton 17A(b)(4)(B) of the Act.[3] Section 17A(b)(4)(B) requires a registered clearing agency to have financial responsibility, operational capability, experience and competency standards that are used to accept, deny, or condition participation of any participant or any category of participants enumerated in section 17A(b)(3)(B). In accordance with the exemption, GSCC's current rules do not set any specific operational capacity, financial responsibility, experience, or competency standards. When GSCC requested its exemption, GSCC represented that it would develop appropriate member financial and operational standards in the near future, before it expanded its range of services, and, in any event, before it offered trade accounting or netting services. The collection and evaluation of such information should provide GSCC with useful information in developing such membership and applicant standards.

The Commission believes it is essential that GSCC obtains from applicants the financial and operational information described above and analyze that information to ensure that applicants without sufficient financial and operational capability are not admitted as members, thus minimizing GSCC's exposure to risk. The Commission believes that it is equally important for GSCC to obtain periodic updated information regarding current financial and operational capabilities of existing members to assess any changes in their financial capabilities. Obtaining this information will allow GSCC to take any appropriate action it deems necessary to protect itself from the risk of change in a member's financial capability.[4] Furthermore, the Commission believes that the periodic filing and review of updated financial information is essential to GSCC as it prepares the policies and procedures necessary to establish a netting service.

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[1] 15 U.S.C. 78s(b)(1)

[2] *See* Securities Exchange Act Release No. 26452 (January 12, 1989), 54 FR 2249.

[3] *See* GSCC's temporary registration order. Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839.

[4] The Commission notes that GSCC has designed its proposal to minimize the burden on potential applicants and members by only requesting copies of documents which potential applicants and members have already prepared.

IV. Conclusion

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change [File No. SR-GSCC-88-3) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 23, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-4832 Filed 3-1-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16836; File No. 812-7224]

Keystone Provident Life Insurance Co., et al.; Application for Exemption

February 24, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

Applicants: Keystone Provident Life Insurance Company ("Keystone"); KMA Variable Account (the "Account") and Keystone Provident Financial Services Corp. ("KPFSC") (collectively, the "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction of an asset based sales charge and the mortality and expense risk charge from the assets of the Account.

Filing Date: The application was filed on January 24, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 20, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Robert R. Baird, Esq., Keystone Provident Life Insurance Company, 99 High Street, Boston, Massachusetts 02110. Copies to Joan E. Boros, Esq., Freedman, Levy, Kroll & Simonds, 1050 Connecticut Avenue NW., Suite 825, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272-2026 or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Account, registered as a unit investment trust under the Act, was established to fund certain variable annuity contracts, including the individual variable annuity contract (the "Contract") to be issued by Keystone. The Account is divided into sub-accounts which invest solely in the shares of one of the several corresponding portfolios of the SteinRoe Variable Investment Trust. Purchase payments under a Contract may be invested in both the Account and in Keystone's general account.

2. KPFSC will serve as principal underwriter for the Contracts. KPFSC is a broker-dealer registered under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

3. Keystone will have responsibility for all administration of the Contract and Account. For such services, the contract maintenance charge is initially set at $30 per year, and may not exceed costs or $100 per year. The full amount of this charge will be deducted, prior to the annuity date, from the Account on the anniversary of the effective date of a Contract and on the date of any total surrender not falling on the anniversary of the effective date of the Contract.

4. No sales charge will be deducted from a Contract's purchase payment when initially received. A contingent deferred sales charge ("CDSC") may be deducted upon a partial or total surrender of a Contract. The first surrender in any Contract year is free of the CDSC to the extent the surrendered amount does not exceed 10% of the account value at the time of surrender. The amount of the surrender will be deducted from the purchase payments in chronological order from the oldest to the most recent until such amount is fully deducted. Any amount deducted in excess of the 10% limit will be subject to CDSC as follows. The CDSC for each purchase payment from which a deduction will be made equal to (x) multiplied by (y), where: (x) is the amount so deducted; and (y) is the applicable percentage from the table below for the number of years that have elapsed from the date of payment to the date of surrender.

Year from date of payment	Charge, percent
1	7
2	6
3	5
4	4
5	3
6	2
7	1
Thereafter	0

No CDSC will be imposed on payments received more than 7 years prior to the surrender.

5. During each year of the accumulation period of a Contract, Keystone will assess each sub-account of the Account with a daily sales charge that will amount to an aggregate of .15% annually of the assets of each sub-account. The asset based sales charge will only be deducted if the sum of such charge plus any previously deducted CDSC, does not exceed 8.5% of the total purchase payments under each Contract. Keystone will establish and apply administrative procedures for monitoring the applicable sales charges. No asset based sales charge will be assessed during a Contract's annuity period.

6. Applicants submit that the asset based sales charge and the CDSC are designed to reimburse Keystone for expenses of selling the Contract, including compensation paid to selling dealers and the costs of sales material. Applicants further submit that the deduction of the sales charges under the Contracts, as an asset based sales charge and as a CDSC, will be more favorable to a Contract Owner than the deduction of the sales charges from purchase payments, for the following reasons: the amount of a Contract Owner's purchase payments that will be allocated to the Variable Account to be invested will be greater than it would be if the sales charge were deducted from such purchase payments; and among other benefits, the death benefit under a Contract may be greater since the death benefit may be based, in part, on a Contract Owner's total accumulation value under his or her Contract as of the seventh policy anniversary. Applicants submit that, although the proposed asset

based sales charge may not fall within the literal terms of section 2(a)(35), the charge is consistent with the intent and definition of sales load in the Act. Keystone will not impose a front-end sales charge on purchase payments under the Contracts, although Keystone will continue to incur expenses for the sale of the Contract. Applicants submit that such expenses are within the definition of "sales load," and, except for the timing and imposition of the asset based sales charge, would otherwise comply with section 2(a)(35) of the Act.

7. Keystone will deduct from each sub-account of the Variable Account a mortality and expense risk charge equal on an annual basis to 1.25% of the average daily net asset value of each such sub-account (currently estimated to consist of .70% for mortality risks and .55% for expense risks).

8. Variable annuity payments made to annuitants will vary with the investment experience of the Variable Account, but will not be affected by the mortality experience (death-rate) of persons receiving such payments or of the general population. Keystone guarantees a death benefit equal to the surrender value upon the death of Contact Owners and annuitants. Keystone also guarantees a minimum death benefit paid upon the death of certain Contract Owners and annuitants that may exceed purchase payments or the surrender value at the time of death. This payment will not be reduced by any CDSC.

9. Keystone will assume an expense risk because the maintenance responsibilities both before and after the date on which annuity payments begin will be the same and the contract maintenance charge may not be sufficient to reimburse Keystone for its costs. Keystone also assumes the risk that the expenses of administering the Contract after annuity payments begin may exceed the charge in effect at the time or annuitization.

10. Applicants represent that the level of the mortality and expense risk is within the range of industry practice for the comparable variable annuity contracts. Applicants state that they have reviewed publicly available information regarding products of other companies taking into consideration such factors as: guaranteed minimum death benefits; guaranteed annuity purchase rates; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed; market sector; investment options under the Contract; and availability to fund individual qualified and non-qualified Plans. Applicants represent that they will maintain at their administrative office, and make available to the Commission, a memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, Keystone's comparative review.

11. Keystone represents that the asset based sales charge and CDSC may be insufficient to cover all costs related to distribution of the Contracts and that if a contribution to surplus is realized from the mortality and expense risk charge, all or a portion of that charge may be used for distribution expenses. Keystone has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Account and Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Keystone at its administrative offices and will be available to the Commission. Moreover, Keystone represents that the Account will invest only in an underlying mutual fund, which undertakes, in the event it should adopt any plan under Rule 12b-1 under the Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of which are not "interested persons" of such fund within the meaning Section 2(a)(19) of the 1940 Act.

12. Applicants submit, for all the reasons stated herein, that their requests for exemption meet the standards set out in section 6(c) and summarized above and that an order of the Commission, should, therefore, be granted. Accordingly, Applicants request exemption pursuant to section 6(c) from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the assessment and deduction of the asset based sales charge and the mortality and expense risk charge with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-4830 Filed 3-1-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16837; 812-7234]

Security Mortgage Acceptance Corp. et al.; Application for Exemption

February 24, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption from all provisions of the Investment Company Act of 1940 ("1940 Act").

Applicants: Security Mortgage Acceptance Corporation—1, on behalf of itself and the other entities covered or to be covered by the requested order (the "Applicant") and Bear Stearns & Co. Inc. *Relevant 1940 Act Section:* Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order amending a previous order (the "Existing Order") issued to Applicant (Investment Company Act Release No. 16715, December 28, 1988) to permit the sale of residual interests in the Old SMAC Companies (as defined in paragraph 2 below under the heading "Applicant's Representations") under the circumstances summarized below and described more fully in the application.

Filing Date: The application was filed on February 3, 1989 and an amendment to the application was filed on February 21, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 20, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Security Mortgage Acceptance Corporation—1, 1385 Eaton Center, 1111 Superior Avenue, Cleveland, Ohio 44114.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Security Mortgage Acceptance Corporation—1, on its own behalf and on behalf of future corporations

originally sponsored and wholly-owned by Alfred Lerner and organized for the same limited purpose as Security Mortgage Acceptance Corporation—1 (collectively "SMAC"), filed an application on November 20, 1985 (the "First Application"), for an order of the SEC exempting them from all provisions of the 1940 Act to permit SMAC to sell Bonds [1] collateralized by Mortgage Collateral. On July 23, 1986, the SEC granted the requested relief (Investment Company Act Release No. 15220) (the First Order"). On August 22, 1988, Applicant filed an application (the "Second Application") requesting an amendment to the First Order to sell Residual Interests to (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the Securities Act of 1933, as amended (such Investors being collectively referred to as "Eligible Purchasers"). On December 28, 1988, the SEC granted the Existing Order (Investment Company Act Release No. 16715).

2. To date, Mr. Lerner has sponsored two corporations which are subject to the Existing Order, Security Mortgage Acceptance Corporation—1 and Security Mortgage Acceptance Corporation—2 (the "Old SMAC Companies"), each of which has issued two series of Bonds. The Existing Order currently permits the sale of stock of SMAC, including the old SMAC Companies, or a sale of beneficial interests in the Residual Interest therein. On December 30, 1988, Mr. Lerner sold all the outstanding capital stock in the Old SMAC Companies to Barr, Stearns & Co. Inc. (the "Purchaser"), an Eligible Purchaser, in a transaction consummated in accordance with the terms of the Existing Order. The Purchaser desires to sell the Residual Interest in the Old SMAC Companies as permitted by the Existing Order and/or as contemplated in the application and summarized below.

3. To maximize the value of the Residual Interest,[2] it currently is proposed that the Old SMAC Companies be permitted to reorganize as an owner trust. The Old SMAC Companies as the depositors and an owner trustee, which is unaffiliated with the Applicant, would form an owner trust (the "Trust"), a single purpose entity as defined by the same nationally recognized statistical rating agency or agencies that rated the relevant series of Bonds and would be "bankruptcy remote" to the same extent as the Old SMAC Companies. Its sole purpose would be to hold the Mortgage Collateral and to engage in activities incidental thereto. Unlike the typical owner trust, the Trust would not be permitted to issue any additional series of Bonds in reliance on the requested order.

4. The Old SMAC Companies would sell the Mortgage Collateral securing the Bonds to the Trust in exchange for all of the trust certificates in the Trust (which would constitute the Residual Interest). The Residual Interest than would be sold. The Trust would assume all obligations of each of the Old SMAC Companies under the relevant Indenture and would succeed as issuer of the Bonds, which would remain outstanding. Bondholders would receive notice of the reorganization, and the Old SMAC Companies would be dissolved. The reorganization would not require registration under the Securities Act of 1933, as amended, and would not violate any provisions of the Securities Exchange Act of 1934, as amended, or the Trust Indenture Act of 1939, as amended. The Trust would own the Mortgage Collateral, and the Trustee under the Indenture or its nominee would hold the Mortgage Collateral, in each case subject to the lien of the relevant Indenture, which explicitly permits a reorganization of the character described without the necessity of obtaining Bondholder consent. No payment term of the Bonds would be changed thereby, the Mortgage Collateral would not be adversely impaired or affected as a result thereof, no lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Mortgage Collateral would be created thereby, and nothing in the proposed reorganization would deprive the Bondholders of the security afforded by the lien of the related Indenture or result in the purchasers of the Residual Interest having priority over Bondholders. The rating of the Bonds would be unaffected by the proposed reorganization.

5. As an alternative to the transaction described in paragraph 4 above, one or both of the Old SMAC Companies may desire to transfer Mortgage Collateral securing one (or both) series of Bonds issued by that Old SMAC Company to one or more owner trusts or other entities. It shall be a condition to the requested relief that in no event would a transaction be consummated where the representations made in paragraph 4 above could not be made,[3] except as provided in footnote 3 below, or where the condition set forth below would not be applicable.

Revised Condition

The condition set forth in the body of the Existing Order regarding the sale or other impairment of the Mortgage Collateral is revised in its entirety to read as follows:

Without the written consent of each Bondholder to be affected, neither the holders of any Residual Interest nor either Old SMAC Company (or the Trust or other entity described in the application) will be able to impair or adversely affect the Mortgage Collateral securing a series of Bonds (including, without limitation, selling the Mortgage Collateral while a series of Bonds remains outstanding), provided that any such entity would be permitted to sell the Mortgage Collateral without Bondholder consent to an owner trust or other entity that would succeed to its obligations under the relevant Indenture in the transaction of the type described in the application. The foregoing does not prohibit substitution of Mortgage Collateral as permitted by the Existing Order.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-4831 Filed 3-1-89; 8:45 am]

BILLING CODE 8010-01-M

[1] This and all other capitalized terms used herein, and not otherwise defined herein, shall have meanings ascribed to such terms in the First and Second Application.

[2] An election to be treated as a subchapter S corporation under the Internal Revenue Code had been filed in respect of each of the Old SMAC Companies. This advantageous tax treatment was lost when the stock of the Old SMAC Companies was sold to the Purchaser. As a result, a subsequent purchaser of the stock could be subject to tax at two levels: first at the Old SMAC Companies' level and second at its own level. Consequently, the net cash flow from the Residual Interest would be less than if the sale took a form other than a sale of stock.

[3] Where the Mortgage Collateral securing one of the two Series of Bonds issued by an Old SMAC Company is sold and the Mortgage Collateral securing the other Series is not, however, the relevant Old SMAC Company would not be dissolved as described in paragraph 4 above.

[Release No. IC-16838; File No. 811-5372]

John Hancock Variable Annuity Account F

February 24, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: John Hancock Variable Annuity Account F ("Applicant")

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on January 23, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 20, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington DC 20549. John Hancock Variable Annuity Account F, John Hancock Place, P.O. 111 Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst (202) 272–2058 or Clifford E. Kirsch, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. On October 22, 1987, Applicant, a separate account of John Hancock Mutual Life Insurance Company, filed a Notification of Registration on Form N–8A and a registration statement on Form N–4. The registration statement never became effective and no public offering of the securities of the Applicant was ever made.

2. Applicant represents that it has never had any assets, has no debts or other liabilities outstanding, is not a party to any litigation or administrative proceeding, has no security holders and is not now engaged, nor does it propose to engage, in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–4888 Filed 3–1–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2329]

Illinois Declaration of Disaster Loan Area

The above-numbered Declaration (54 FR 3891) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated February 13, 1989, to include Hamilton County, in the State of Illinois, due to damages from severe storms and tornadoes beginning on January 7, 1989. In addition, applications from eligible small businesses located in the contiguous county of Franklin, Illinois, may be filed until the specified date. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on March 17, 1989 and for economic injury until the close of business on October 13, 1989.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.

Date February 21, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–4911 Filed 3–1–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2334 & #2335]

New York; (And Contiguous Counties in the State of Connecticut); Declaration of Disaster Loan Area

The City of Yonkers, Westchester County, and the contiguous counties of Bronx, Nassau, Putnam, and Rockland, in the State of New York, and Fairfield County, in the State of Connecticut, constitute a disaster area as a result of damages from severe fires which destroyed two apartment buildings located at 100–106 Locust Hill Avenue and 2–10 School Street, in the City of Yonkers, on January 11, 1989. Application for loans for physicial damage as a direct result of these fires may be filed until the close of business on April 24, 1989 and for economic injury as a direct result of these fires until the close of business on November 22, 1989 at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, NJ 07410.

or other locally announced locations.

	Percent
The interest rates are:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Businesses and non-profit organizations (EIDL) without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	9.125

The numbers assigned to this disaster for physical damage are 233405 for the State of New York, and 233505 for the State of Connecticut; and for economic injury the numbers are 672200 for the State of New York and 672300 for the State of Connecticut.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59009)

Date February 22, 1989.

James Abdnor

Administrator.

[FR Doc. 89–4912 Filed 3–1–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2336]

Tennessee; Declaration of Disaster Loan Area

Wilson County, and the contiguous counties of Cannon, Davidson, Dekalb, Smith, Sumner, Trousdale, and Rutherford, in the State of Tennessee, constitute a disaster area as a result of damages from severe storms and flooding which occurred February 13–14, 1989. Applications for loans for physical damage may be filed until the close of business on April 24, 1989 and for economic injury until the close of business on November 24, 1989 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, GA 30308.

or other locally announced locations.

	Percent
The interest rates are:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Businesses and non-profit organizations (EIDL) without credit available elsewhere	4.000

	Percent
Other (including non-profit organizations) with credit available elsewhere	9.125

The number assigned to this disaster for physical damage is 233606 and for economic injury the number is 672400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date February 23, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-4913 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2337 & #2338]

Tennessee; (And Contiguous Counties in the State of Kentucky); Declaration of Disaster Loan Area

Obion County, and the contiguous counties of Dyer, Gibson, Lake, and Weakley, in the State of Tennessee, and Fulton and Hickman Counties, in the State of Kentucky, constitute a disaster area as a result of damages from severe storms and flooding which occurred February 14–15, 1989. Applications for loans for physical damage may be filed until the close of business on April 24, 1989 and for economic injury until the close of business on November 24, 1989 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Altanta, GA 30308.

or other locally announced locations.

The interest rates are:	Percent
Homeowners with credit available elsewhere	8.00
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Businesses and non-profit organizations (EIDL) without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125

The numbers assigned to this disaster for physical damage are 233706 for the State of Tennessee, and 233806 for the State of Kentucky; and for economic injury the numbers are 672500 for the State of Tennessee and 672600 for the State of Kentucky.

[Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.]

Dated: February 23, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-4914 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting; Arkansas

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of Little Rock, will hold a public meeting at 10:00 a.m. on Thursday, April 6, 1989, at the Riverfront Hilton, 2 Riverfront Place, North Little Rock, Arkansas 72114, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald L. Libbey, District Director, U.S. Small Business Administration, 320 West Capitol, Suite 601, Little Rock, Arkansas 72201, 501/378-5871.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

February 23, 1989.

[FR Doc. 89-4915 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting; Maine

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Augusta will hold a public meeting at 10:00 a.m. on Tuesday, March 28, 1989, at the Branding Iron Restaurant, Route 202, Winthrop, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Roy Perry, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine, 207/622-8382.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

February 23, 1989.

[FR Doc. 89-4916 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M

Las Vegas District Council; Public Meeting; Nevada

The Small Business Administration, Las Vegas District Advisory Council will hold a public meeting Friday, March 31, 1989, at the U.S. Small Business Administration Office, located at 301 E. Stewart Avenue, Downtown Station, Post Office, 3rd Floor Room 301, Las Vegas, Nevada, from 9:00 a.m. to 12:00 Noon to discusss such matters as may be presented by the Advisory Board members, staff of the Small Business Administration, and others present.

For further information, write Elizabeth Sutton, Secretary for the District Advisory Council, U.S. Small Business Administration, 301 E. Stewart, P.O. Box 7527, Las Vegas, Nevada 89125, or call (702) 388-6611.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

February 23, 1989.

[FR Doc. 89-4917 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1267]

Advisory Committee on International Communications and Information Policy; Meeting

The Department of State announces that the Advisory Committee on International Communications and Information Policy will meet on March 20 in the Lecture Room of the National Academy of Sciences, 22nd and C Streets, NW., Washington, DC, from 9 a.m. until 12:45 p.m.

The Committee serves the Department of State in an advisory capacity concerning major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy and the activities of international organizations with regard to communications and information, and developing country interests.

In view of the regulatory and structural changes taking place in the telecommunications sector, the March 20 meeting will focus on development of U.S. policy toward the International Telecommunication Union (ITU) and review technology transfer issues in the telecommunications sector. The ITU discussion will focus particularly on the upcoming ITU Plenipotentiary Conference which will review the structure, purpose and international regulatory reach of the organization.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating

available. Prior to the meeting, persons who plan to attend should so advise the office of Mrs. Lucy H. Richards, Department of State, Washington, DC, telephone (202) 647–5230.

Dated: February 14, 1989.

Lucy H. Richards,

Director, Office of Industrialized Country Policy, Executive Secretary, Advisory Committee on International Communications and Information Policy.

[FR Doc. 89–4796 Filed 3–1–89; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1263]

Advisory Committee on International Investment; Meeting

The Department of State will hold a meeting of the Advisory Committee on International Investment on March 17, 1989 from 9 a.m. to 1 p.m. The meeting will be held in Room 1912 at the Department of State, 2201 "C" Street, NW., Washington, DC 20520.

The agenda and approximate times topics will be discussed are as follows:

—9:00 Review of agenda and introduction of first speaker by Professor Isaiah Frank of the Johns Hopkins School of Advanced International Studies.

—9:05 Welcoming remarks by Assistant Secretary of State for Economic and Business Affairs Eugene J. McAllister.

—9:20 Commentary on the current status of the U.S. initiative on investment in the OECD, the bilateral investment treaty (BIT) program, and of TRIMs in the GATT by William B. Milam, Deputy Assistant Secretary of State for International Finance and Development and Marilyn A. Meyers, Director of the Office of Investment Affairs at the Department of State. Remarks to be followed by questions and comments by committee members.

—10:00 Coffee.

—10:15 Presentation by Professor John Kline of Georgetown University on the concept of corporate nationality and on recent attempts by the Congress and the Reagan Administration to regulate imports and foreign investment and to establish an industrial policy. Followed by comments and questions by members of the committee.

—11:45 Presentation by Betty L. Barker, Chief, International Investment Division, Bureau of Economic Analysis, Department of Commerce on the data collection activities of the U.S. government with respect to inward investment in the United States. Discussion of what currently available data reveal about the effects and extent of foreign investment in the United States. Followed by comments and questions by members of the committee.

—1:00 Meeting concludes.

Access to the Department of State is controlled. Therefore, members of the public wishing to attend the meeting must notify the Office of Investment Affairs at (202) 647–2585 in order to arrange admittance. Please use the "C" Street entrance.

Robert C. Reis, Jr.,

Executive Secretary.

February 14, 1989.

[FR Doc. 89–4797 Filed 3–1–89; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1265]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on March 28, 1989, in room 6103, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 57th Session of the Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) which is scheduled for 3–12 April 1989 in London at the IMO headquarters. The purpose of the meeting is to discuss the papers received and the draft U.S. positions for the 57th Session. Interalia, the items of particular interest on the agenda for this Session are:

—Reports of the various subcommittees

—Outcome of 1988 Global Maritime Distress Safety System (GMDSS) Conference and the GMDSS Protocol Conference

—IMO Guidelines on Management for Safe Ship Operation and Pollution

—Guidelines and Standards for the removal of offshore installations

—Piracy and armed robbery against ships

—Work programme

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G–CI), 2100 Second Street, SW., Washington, DC 20593 or by Calling: 202–267–2280.

Date: February 21 1989

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89–4798 Filed 3–1–89; 8:45 am]

BILLING CODE 4710–01–M

[Public Notice CM–8/1264]

Organization for the International Telegraph and Telephone Consultative Committee CCITT Study Group A; Cancellation and Rescheduling Meeting

The Department of State announces that the meeting previously scheduled for March 9, 1989 is cancelled and has been rescheduled. Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) is rescheduled to meet on March 30, 1989 at 9:30 a.m. in Room 1107, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The purpose of the meeting will be to:

(a) Debrief of relevant Administrative Council meeting issues

(b) Debrief of relevant Study Group XVIII meeting issues (liaisons)

(c) Debrief of CCITT Study Group II issues

(d) Development and/or review of contributions to CCITT Study Group

I. III (April 24–28, 1989)

2. I (May 2–12, 1989)

While it is noted that U.S. Study Group D would normally consider contributions for CCITT Study Group VIII, this meeting may, exceptionally consider possible delayed contributions for the meeting of Study Group VIII, scheduled for 12–20 April, in Geneva.

The meeting may consider other issues concerning CCITT Study Group activity. Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone 647–5220. All attendees must use the C Street entrance to the building.

Dated: February 17, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 89–4799 Filed 3–1–89; 8:45 am]

BILLING CODE 4710–07–M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Power Distributors Annual Report to TVA.

Frequency of Use: Annually.

Type of Affected Public: Business or other for-profit, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 320.

Estimated Total Annual Burden Hours: 3,072.

Estimated Average Burden Hours Per Response: 9.6.

Need For and Use of Information: This information collection supplies TVA with financial and accounting information to help ensure that electric power produced by TVA is sold to consumers at rates which are as low as feasible.

John W. Thompson,

Vice President, Services, Senior Agency Official.

[FR Doc. 89-4817 Filed 3-1-89; 8:45 am]

BILLING CODE 8120-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Priority Practices; Request for Public Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public on practices that should be considered with respect to identification of priority practices under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420).

SUMMARY: Section 310 of the Trade Act requires the United States Trade Representative (USTR) to identify trade liberalization priorities, "including major barriers and trade distorting practices, the elimination of which are likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent." USTR is requesting written submissions from the public concerning foreign countries' practices that should be considered under section 310.

DATE: Submissions must be received on or before March 24, 1989.

FOR FURTHER INFORMATION CONTACT: A. Jane Bradley, Associate General Counsel and Chairman, Section 301 Committee, or Dorothy Balaban, Staff Assistant to the Section 301 Committee, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506, (202) 395-3432.

SUPPLEMENTARY INFORMATION: Section 310 (a) of the Trade Act requires the USTR, no later than May 30, 1989, to identify United States trade liberalization priority practices and countries and submit a report on such priorities to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and publish it in the **Federal Register.** Section 310(b) of the Act requires the Trade Representative to initiate investigations under section 302 of the Act, by June 20, 1989, with respect to priorities identified in said report.

USTR invites submissions on major foreign trade barriers and trade distorting practices that should be considered in identifying priorities. Submissions should: (1) Include information on the nature and significance of the foreign policy or practice, (2) identify the United States product, service, intellectual property right, or foreign direct investment matter which is affected by the foreign practice, (3) indicate the volume of trade in the goods or services involved, and (4) provide any other information considered relevant.

Interested persons must provide twenty copies of the submission to Dorothy Balaban, Section 301 Committee, Room 222, 600 17th Street NW., Washington, DC 20506.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89-4950 Filed 3-1-89; 8:45 am]

BILLING CODE 3190-01-M

Generalized System of Preferences; Information on Imports During First 10 Months of 1988 and Invitation of Comments

This notice is for information only and has no legal effect. It is provided in order to inform the public of certain import statistics covering the period of January through October 1988 and to afford the public an opportunity to comment on certain discretionary decisions the President must make on or about April 1, 1989 with respect to the GSP program. These decisions concern the GSP "competitive need" limits set forth in section 504(c) and section 504(d)(2) of the Trade Act of 1974 (19 U.S.C. 2464 (c)), and possible redesignation of articles previously graduated from GSP. Presidential decisions concerning the application of competitive need limits and all other product-related decisions stemming from the 1988 Annual Review are expected to be announced on or about April 1, and implemented on July 1, 1989.

Pursuant to section 504(c), any GSP eligible beneficiary country that exported to the United States during the most recent calendar year a quantity of any one GSP eligible article in excess of (1) $25 million indexed to the U.S. Gross National Product since 1974, or (2) 50 percent of the value of total U.S. imports of the article, is to be removed from GSP eligibility not later than July 1 of the next calendar year.

Based on preliminary data and subject to revision, the aforementioned dollar limit is expected to be approximately $82,504,413 million for calendar year 1988.

As a result of the Trade and Tariff Act of 1984, a general review of the GSP was initiated in 1985 and the results of the review announced on January 2, 1987 (52 FR 389). The purpose of the review was to determine whether beneficiary countries have become sufficiently competitive in GSP-eligible products, on a product and country specific basis. For countries found to be sufficiently competitive with respect to a product, the percentage competitive need limit was reduced to 25 percent and the dollar limit was reduced to $25 million indexed

to the nominal growth of U.S. GNP since 1984. Based on preliminary data and subject to revision, the aforementioned dollar limit for countries found to be sufficiently competitive is expected to be approximately $32,212,635 million for the calendar year 1988.

Section 504 (d)(2) of the Trade Act of 1974, as amended, permits the President to disregard the 50 percent "competitive need" limit with respect to any eligible article if the value of total imports of the article during the most recent calendar year did not exceed $5 million, adjusted annually to reflect changes in the U.S. Gross National Product. This *"de minimis"* level is expected to be approximately $9,689,219 million dollars for calendar year 1988.

A proclamation will be issued to be effective July 1, 1989, making the adjustments that are required by section 504(c) of the Trade Act and announcing the discretionary decisions referred to in this notice, on the basis of official data covering all of calendar year 1988.

It should be emphasized that the information set forth below covers only the first 10 months of 1988. While this is not complete information, it is being published now in order to provide the maximum possible advance indication as to adjustments that may be made to meet the requirements of section 504(c) of the Trade Act and to afford the opportunity for comment in potential discretionary decisions.

List I below shows specific GSP-eligible articles for countries which have already exceeded estimated competitive need limitations (country supplied over $82,504,413 million, or $32,212,635 million in the case where a country has been found sufficiently competitive in the product, during January-October 1988) or have been graduated from the GSP in earlier years pursuant to the President's discretionary authority.

List II below shows countries which are approaching the competitive need limitations (country accounted for over 47 percent of the value of total U.S. imports and/or over $64 million, or for countries found to be sufficiently competitive over 23 percent and/or $26 million during January-October 1988).

List III below shows countries which, despite accounting for more than 50 percent (or 25 percent in the case of a country found sufficiently competitive in a product) of the value of total U.S. imports of an article, may be eligible to receive GSP benefits through the *de minimis waiver* (country accounted for more than applicable percentage limit and the value of total U.S. imports of the item was less than $8,689,219 million during January–October 1988).

List IV below shows countries which are currently ineligible for the GSP but which may be eligible for redesignation to GSP status pursuant to the President's discretionary authority (country accounted for less than 50 percent, or 25 percent in the case if products determined to be sufficiently competitive, of the value of U.S. imports and the value of total U.S. imports was less than the applicable dollar limit during January–October 1988).

As noted above, the decisions that the President will make on whether to waive the percentage limit in cases where trade is *de minimus* and whether to redesignate countries with respect to products are discretionary. In this regard, the GSP Subcommittee of the Trade Policy Staff Committee invites public comment relevant to these potential upcoming decisions.

All written comments with regard to these decisions should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20506. All submissions should conform to 15 CFR 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2) and 2007.1(a)(3). Furthermore, all those parties providing comments should indicate on the first page of the submission the name of the petitioner, HS subheading(s), and beneficiary country(s) of interest, and the type of action (i.e., the use of the President's *de minimus* waiver authority, etc * * *) in which the party is interested.

These statements must be accompanied by twenty copies, in English, of all comments and must be received by the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. Thursday, March 9 at the address listed above. If the comments contain business confidential information, twenty copies of a nonconfidential version of the comments along with twelve copies of the confidential version must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non confidential."

Written comments submitted in connection with these decisions will be subject to public inspection by appointment only with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. The GSP Information Center is located at the Office of the United States Trade Representative at the address listed above. The GSP Information Center phone number is (202) 395–6971.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1988

	HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	0603.10.70	Colombia	91.1%	$83,961,884	$92,189,493
*R	2203.00.00	Mexico	19.5%	$154,288,212	$791,701,879
*	2825.90.15	Brazil	0.0%	$0	$0
*	2827.59.05	Israel	85.6%	$1,724,657	$2,015,789
*	2903.59.40	Israel	51.1%	$202,810	$396,817
*	2903.40.00	Israel	0.0%	$0	$0
*	2918.22.10	Turkey	1.7%	$78,558	$4,541,762
*	2933.40.10	Israel	81.6%	$615,690	$754,282
*	4823.20.10	Brazil	45.6%	$112,859	$247,594
*R	6810.11.00	Mexico	16.2%	$303,413	$1,868,549
*	7113.11.50	Thailand	5.9%	$11,877,614	$201,681,528
*	7113.19.50	Thailand	5.9%	$35,628,804	$603,348,091
*	7113.20.50	Thailand	5.9%	$11,877,614	$201,381,799
*	7202.21.10	Brazil	61.1%	$9,518,293	$15,577,300
*R	7202.21.50	Brazil	31.0%	$28,205,743	$90,842,826
*R	7202.30.00	Brazil	11.0%	$8,776,391	$79,636,095
*	7307.21.50	Brazil	0.2%	$20,726	$10,134,528
*	7307.91.50	Brazil	7.0%	$2,142,899	$30,466,117
*	7323.94.00	Mexico	11.3%	$5,771,197	$50,848,532
*	7604.10.30	Venezuela	66.7%	$11,915,394	$17,868,040
*	7604.29.30	Venezuela	64.0%	$41,703,884	$65,199,606
*	7605.11.00	Venezuela	68.5%	$2,978,848	$4,346,026
*	7605.21.00	Venezuela	68.5%	$2,978,848	$4,346,026
	8407.34.20	Mexico	21.3%	$420,298,952	$1,976,092,099
R	8408.20.20	Brazil	78.3%	$141,901,412	$181,231,452
R	8409.91.91	Mexico	4.4%	$36,988,457	$846,539,914
R	8409.91.91	Brazil	7.7%	$64,873,789	$846,539,914
R	8409.99.99	Brazil	17.0%	$45,663,123	$267,829,671
R	8415.90.00	Mexico	24.4%	$43,919,129	$179,988,045
	8471.91.00	Mexico	7.1%	$106,947,379	$1,498,008,222
	8501.40.40	Mexico	75.2%	$88,927,125	$118,177,703
	8504.40.00	Mexico	13.8%	$149,992,354	$1,084,525,556
R	8523.20.00	Mexico	16.1%	$42,875,878	$265,877,975
	8527.21.10	Mexico	31.6%	$348,590,091	$1,102,009,675
R	8527.21.10	Brazil	7.6%	$83,676,768	$1,102,009,675
	8536.50.00	Mexico	23.1%	$144,745,082	$627,534,265
	8536.69.00	Mexico	21.6%	$96,757,587	$447,147,862
	8544.30.00	Mexico	72.1%	$721,196,541	$999,864,635
	8544.51.80	Mexico	33.7%	$130,469,806	$387,618,489
	8708.21.00	Mexico	75.8%	$201,004,467	$265,161,017
	8708.99.50	Mexico	5.6%	$306,876,438	$5,500,680,107
	8708.99.50	Brazil	1.8%	$101,404,532	$5,500,680,107
	8802.30.00	Brazil	9.8%	$107,176,797	$1,092,953,109
*R	9401.30.40	Yugoslavia	20.0%	$6,735,717	$33,729,482

* = PETITION GRADUATION; R = REDUCED LIMIT APPLIES; + = NEW EXCLUSION

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1988

	HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
+ R	9401.40.00	Thailand	0.9%	$384,911	$43,115,303
*R	9401.61.40	Yugoslavia	19.8%	$13,535,246	$68,435,295
+ R	9401.61.60	Thailand	2.3%	$371,964	$16,348,185
*R	9401.69.60	Yugoslavia	19.2%	$47,511,661	$246,819,766
+ R	9401.69.80	Thailand	2.5%	$726,870	$29,476,316
	9401.90.10	Mexico	42.4%	$162,084,193	$382,510,364
+*	9401.90.40	Yugoslavia	11.6%	$2,709,913	$23,461,656
+ R	9403.30.80	Thailand	3.4%	$14,442,192	$430,420,719
+ R	9403.40.90	Thailand	3.0%	$7,885,679	$260,349,356
+ R	9403.50.90	Thailand	0.4%	$641,822	$167,128,683
+ R	9403.60.80	Thailand	3.8%	$12,963,277	$345,358,452

* = PETITION GRADUATION; R = REDUCED LIMIT APPLIES; + = NEW EXCLUSION

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1988

		HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
X		0702.00.60	Mexico	99.1%	$55,902,441	$56,407,576
X		0703.20.00	Mexico	63.8%	$6,796,617	$10,657,737
X		0707.00.20	Mexico	95.1%	$17,748,137	$18,654,882
X		0709.60.00	Mexico	73.7%	$44,644,829	$60,575,973
X		0709.90.20	Mexico	97.1%	$25,071,902	$25,810,922
X		0804.50.40	Mexico	80.0%	$10,162,729	$12,706,194
X		0807.10.20	Mexico	75.8%	$27,232,676	$35,923,604
X	R	0807.10.70	Mexico	38.9%	$6,984,021	$17,949,878
X		0811.10.00	Mexico	82.6%	$13,792,873	$16,701,542
X		0813.10.00	Turkey	64.3%	$6,311,993	$9,822,332
		1102.30.00	Thailand	69.6%	$675,048	$970,475
		1103.14.00	Thailand	65.1%	$75,010	$115,278
X		1515.30.00	Brazil	93.5%	$22,002,740	$23,535,540
X		2001.90.40	Mexico	58.0%	$16,977,335	$29,252,948
X		2401.20.40	Brazil	51.5%	$57,261,947	$111,188,312
		2402.10.80	Dominican Republic	50.8%	$16,547,215	$32,595,300
		2608.00.00	Peru	48.9%	$10,503,635	$21,471,856
XNR		2804.69.10	Brazil	26.5%	$10,562,666	$39,894,598
		2915.21.00	Mexico	53.6%	$24,718,653	$46,091,728
X	D	3201.90.50	Mexico	73.0%	$9,126,707	$12,494,477
X	R	3703.20.30	Brazil	18.3%	$31,942,996	$174,105,896
		3903.19.00	Mexico	69.1%	$7,063,185	$10,223,241
X	R	3904.10.00	Mexico	48.7%	$13,821,130	$28,379,160
X	R	3904.21.00	Mexico	48.7%	$7,371,269	$15,135,547
X		3922.20.00	Mexico	74.0%	$8,212,280	$11,097,058
X		3922.90.00	Mexico	74.5%	$10,214,554	$13,703,875
X		4011.10.00	Brazil	6.8%	$65,467,281	$956,816,294
X		4104.31.80	Argentina	52.3%	$40,053,339	$76,515,116
X		4104.39.80	Argentina	52.3%	$8,010,664	$15,303,040
X		4105.20.60	Argentina	52.2%	$8,010,664	$15,353,212
		4106.20.60	India	77.8%	$14,812,194	$19,030,531
X		4107.29.60	Argentina	52.3%	$8,010,664	$15,303,040
X		4107.90.60	Argentina	52.3%	$8,010,664	$15,303,040
X		4409.10.40	Mexico	92.9%	$39,244,553	$42,230,476
X	R	4411.21.00	Brazil	45.7%	$5,464,700	$11,948,672
X	R	4411.29.60	Brazil	47.2%	$8,954,629	$18,969,009
X		4412.19.40	Indonesia	59.1%	$7,726,183	$13,065,269
X		4818.10.00	Mexico	60.9%	$11,446,901	$18,781,447
X		4818.20.00	Mexico	60.9%	$15,262,530	$25,041,862
X		4818.30.00	Mexico	60.9%	$11,446,901	$18,781,447
X		4818.50.00	Mexico	85.3%	$53,143,429	$62,330,460
X		4823.90.65	Mexico	83.5%	$49,809,335	$59,681,428
X		6210.10.20	Mexico	86.6%	$12,451,159	$14,378,832
X		6307.90.60	Mexico	86.6%	$12,451,159	$14,378,832
	R	6702.90.60	Thailand	30.4%	$13,751,243	$45,183,639
	R	6908.10.20	Thailand	25.8%	$3,170,880	$12,312,410
		7113.11.20	Thailand	61.7%	$4,906,412	$7,955,466
		7413.00.10	Peru	57.7%	$9,432,576	$16,350,326

R = REDUCED LIMIT APPLIES; N = NOT REDESIGNATED IN LAST REVIEW
X = COUNTRY CURRENTLY INELIGIBLE FOR GSP UNDER THIS SUBHEADING
D = DENIED de MINIMIS WAIVER IN LAST REVIEW

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1988

		HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
X	R	8414.59.80	Mexico	16.3%	$31,843,058	$195,675,473
X	R	8415.82.00	Mexico	32.9%	$27,989,390	$85,086,707
X	R	8415.83.00	Mexico	22.7%	$26,017,919	$114,752,795
X	R	8426.99.00	Mexico	23.4%	$2,996,317	$12,782,323
		8443.19.10	Mexico	50.1%	$12,232,472	$24,411,577
		8443.19.50	Mexico	50.1%	$12,232,472	$24,411,577
		8504.10.00	Mexico	75.4%	$25,353,441	$33,640,484
X	R	8505.19.00	Mexico	38.2%	$11,787,029	$30,816,475
	R	8507.90.40	Mexico	25.8%	$3,040,147	$11,775,455
X		8509.90.20	Mexico	53.4%	$17,437,373	$32,660,443
X	R	8523.11.00	Mexico	18.6%	$30,356,478	$162,785,359
X		9028.90.00	Mexico	58.0%	$5,645,807	$9,741,541
	R	9503.90.50	Mexico	26.9%	$6,516,389	$24,206,183
	R	9503.90.60	Mexico	8.8%	$28,883,326	$326,866,334

R = REDUCED LIMIT APPLIES; N = NOT REDESIGNATED IN LAST REVIEW
X = COUNTRY CURRENTLY INELIGIBLE FOR GSP UNDER THIS SUBHEADING
D = DENIED de MINIMIS WAIVER IN LAST REVIEW

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1988

		HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
X	D	0704.10.40	Mexico	92.6%	$867,143	$936,519
X	D	0704.10.60	Mexico	96.6%	$132,560	$137,233
X	D	0704.20.00	Mexico	99.2%	$1,727,325	$1,741,028
X	D	0705.11.40	Mexico	97.6%	$7,734,536	$7,921,292
X	D	0705.19.40	Mexico	97.6%	$859,394	$880,146
		0706.90.20	Mexico	90.6%	$3,876,475	$4,276,418
X		0707.00.40	Mexico	89.1%	$7,053,232	$7,919,395
X	R	0708.10.40	Mexico	46.1%	$3,581,817	$7,767,801
		0708.90.05	Turkey	50.6%	$61,757	$122,108
		0708.90.15	Turkey	51.3%	$59,539	$116,118
		0708.90.30	Dominican Republic	98.2%	$264,713	$269,541
X	D	0709.30.20	Mexico	99.4%	$2,424,826	$2,439,712
X	D	0709.30.40	Mexico	98.7%	$4,384,236	$4,441,198
		0709.40.40	Mexico	66.8%	$239,301	$358,060
		0709.90.05	Mexico	62.0%	$2,250,967	$3,630,797
X	D	0709.90.13	Mexico	61.7%	$1,995,054	$3,233,336
		0709.90.16	Mexico	73.3%	$2,079,472	$2,837,421
		0710.29.15	Turkey	51.3%	$14,885	$29,028
		0710.29.30	Dominican Republic	94.6%	$1,978,393	$2,090,350
X	D	0710.80.50	Mexico	99.1%	$564,673	$569,777
X	D	0711.90.60	Mexico	58.0%	$893,547	$1,539,672
		0712.90.10	Israel	72.4%	$898,380	$1,240,084
		0712.90.65	Israel	79.3%	$219,708	$276,920
		0713.20.20	Mexico	81.4%	$3,852,608	$4,735,516
		0714.20.00	Dominican Republic	98.8%	$1,473,338	$1,490,680
		0714.90.10	Dominican Republic	67.7%	$4,291,778	$6,341,917
		0714.90.20	Jamaica	51.2%	$3,983,695	$7,773,204
		0802.50.20	Turkey	67.3%	$2,160,412	$3,211,696
		0802.50.40	Turkey	79.8%	$1,225,908	$1,536,584
		0802.90.15	Mexico	99.5%	$1,717,820	$1,726,773
	R	0804.50.80	Mexico	28.8%	$60,792	$211,049
		0805.90.00	Jamaica	54.7%	$638,341	$1,167,235
		0807.10.30	Mexico	93.0%	$6,880,493	$7,399,109
X	RD	0810.90.40	Mexico	47.4%	$2,079,582	$4,388,810
		0811.90.55	Guatemala	70.5%	$545,979	$773,997
X	RD	0813.30.00	Argentina	47.5%	$1,675,003	$3,528,927
		0910.99.40	Mexico	54.4%	$255,625	$469,526
X	D	1005.90.40	Argentina	91.4%	$2,334,133	$2,552,436
		1007.00.00	Mexico	76.5%	$28,842	$37,699
		1106.30.20	Ecuador	97.8%	$815,200	$833,403
		1301.90.40	Brazil	99.7%	$840,710	$843,288
		1401.90.40	Mexico	52.2%	$1,259,330	$2,410,464
		1403.90.40	Mexico	52.2%	$1,259,330	$2,411,495
		1515.60.00	Mexico	72.5%	$231,947	$319,715
		1515.90.40	Mexico	72.0%	$4,406,974	$6,119,236
		1519.11.00	Malaysia	59.6%	$579,461	$972,012
		1521.90.20	Brazil	56.2%	$31,739	$56,468

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LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1988

		HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
		1702.90.30	Mexico	76.7%	$48,659	$63,452
		1703.10.30	Dominican Republic	48.6%	$2,994,900	$6,160,365
		1703.90.30	Dominican Republic	48.6%	$30,251	$62,226
		2005.80.00	Thailand	78.0%	$4,270,203	$5,473,461
X	RD	2005.90.55	Mexico	51.9%	$2,025,567	$3,903,789
		2006.00.90	Thailand	47.1%	$223,502	$474,538
		2008.19.25	Mexico	99.5%	$1,717,820	$1,726,773
		2008.19.90	Zimbabwe (Rhodesia	53.8%	$454,735	$845,855
		2008.99.23	Dominican Republic	66.9%	$88,747	$132,628
		2208.90.05	Trinidad and Tobag	47.4%	$376,770	$794,923
		2520.20.00	Mexico	60.4%	$70,719	$117,030
		2603.00.00	Mexico	87.6%	$2,607,185	$2,977,321
X	D	2620.19.60	Mexico	82.2%	$631,387	$768,384
X	D	2620.20.00	Mexico	78.6%	$840,113	$1,068,348
X	D	2620.30.00	Mexico	96.2%	$8,670,935	$9,011,993
X		2824.10.00	Mexico	98.0%	$6,464,764	$6,598,259
X	D	2824.20.00	Mexico	59.7%	$402,913	$674,390
		2825.50.30	Mexico	61.2%	$1,001,061	$1,636,991
		2827.41.00	Mexico	61.2%	$200,213	$327,396
		2827.51.10	Israel	96.6%	$1,592,969	$1,648,472
		2827.51.20	Israel	78.3%	$870,416	$1,112,142
		2827.60.20	India	80.1%	$473,803	$591,537
		2833.26.00	Mexico	67.2%	$962,135	$1,431,194
		2835.21.00	Mexico	48.0%	$882,574	$1,837,901
X	RD	2843.21.00	Mexico	78.1%	$3,549,189	$4,546,592
X	RD	2843.29.00	Mexico	65.3%	$2,372,116	$3,632,664
		2905.14.00	Mexico	79.7%	$2,160,314	$2,710,497
XNR		2905.19.00	Brazil	24.8%	$1,696,189	$6,840,091
		2909.11.00	Mexico	48.1%	$12,908	$26,826
XN		2909.19.10	Brazil	61.4%	$5,870,411	$9,563,364
XNR		2915.31.00	Brazil	27.4%	$2,215,506	$8,074,373
X	D	2915.39.10	Mexico	49.4%	$442,076	$894,237
		2917.35.00	Mexico	53.6%	$3,674,174	$6,859,592
	R	2917.35.00	Brazil	38.6%	$2,645,635	$6,859,592
		2918.16.10	Yugoslavia	100.0%	$9,326	$9,326
		2935.00.31	Yugoslavia	50.5%	$3,596,664	$7,117,929
		2939.70.00	India	62.6%	$38,729	$61,880
X	D	3203.00.50	Mexico	71.6%	$6,084,473	$8,501,643
		3206.49.30	Mexico	93.3%	$5,807,724	$6,226,696
X	RD	3207.40.10	Mexico	33.9%	$2,726,207	$8,037,608
X	D	3301.12.00	Brazil	60.8%	$3,670,387	$6,032,915
		3401.11.10	Philippines	52.1%	$723,780	$1,389,853
		3402.19.10	Mexico	56.8%	$38,863	$68,477
		3604.90.00	Israel	55.5%	$1,418,551	$2,554,542
		3802.90.20	Mexico	57.8%	$2,048,129	$3,545,836
		3805.10.00	Brazil	48.4%	$1,071,267	$2,213,192
		3809.10.00	Brazil	80.3%	$918,000	$1,143,907
		3823.20.00	Trinidad and Tobag	80.4%	$538,087	$669,179
		3903.11.00	Mexico	69.1%	$784,799	$1,135,919

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LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1988

	HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
X RD	3904.22.00	Mexico	48.7%	$1,842,818	$3,783,881
	3909.10.00	Israel	53.5%	$4,910,711	$9,184,388
X D	3922.10.00	Mexico	74.0%	$6,159,208	$8,322,822
R	4409.10.60	Mexico	22.7%	$497,841	$2,197,191
	4409.10.60	Honduras	65.9%	$1,448,703	$2,197,191
R	4411.11.00	Brazil	44.1%	$694,137	$1,573,651
X RD	4411.19.20	Brazil	72.4%	$568,187	$784,504
	4412.12.15	Brazil	81.7%	$4,920,172	$6,020,750
	4412.19.10	Indonesia	47.2%	$431,448	$914,958
	4412.99.10	Indonesia	47.1%	$4,357	$9,242
X D	4412.99.40	Indonesia	59.1%	$78,042	$131,975
	4420.90.20	Honduras	49.7%	$211,556	$425,666
R	4421.90.10	Mexico	22.7%	$331,894	$1,464,792
	4421.90.10	Honduras	65.9%	$965,800	$1,464,792
	4809.90.20	Israel	50.0%	$54,323	$108,572
	4811.90.40	Brazil	81.6%	$379,072	$464,414
	4816.10.00	Brazil	47.5%	$2,538,188	$5,347,462
	4816.20.00	Brazil	48.1%	$898,853	$1,869,980
	4816.30.00	Brazil	48.1%	$179,770	$373,988
X D	5208.31.20	India	99.1%	$1,160,550	$1,170,952
X D	5208.32.10	India	98.3%	$3,781,098	$3,847,141
X D	5208.41.20	India	99.1%	$1,160,550	$1,170,952
X D	5208.42.10	India	98.3%	$3,781,098	$3,847,141
X D	5208.51.20	India	99.1%	$1,288,514	$1,299,675
X D	5208.52.10	India	98.3%	$4,618,222	$4,698,369
	5209.31.30	India	84.0%	$580,163	$690,512
	5209.41.30	India	84.0%	$580,163	$690,512
	5209.51.30	India	83.8%	$685,234	$817,302
	5308.90.00	Mexico	47.3%	$471,972	$998,224
	5607.10.00	Thailand	48.3%	$741,818	$1,537,260
	5607.30.20	Philippines	59.9%	$2,919,479	$4,871,819
	5702.20.10	India	73.1%	$588,000	$804,751
X D	6405.90.20	Mexico	69.3%	$5,008,194	$7,222,805
R	6802.99.00	Mexico	24.7%	$2,258,817	$9,140,069
	6810.19.10	Mexico	84.9%	$667,847	$787,091
	6811.30.00	Mexico	98.5%	$2,191,865	$2,224,834
	6814.90.00	India	54.7%	$926,557	$1,694,669
	7106.91.50	Peru	60.1%	$1,571,630	$2,616,948
	7106.92.00	Peru	58.3%	$1,571,630	$2,697,061
	7109.00.00	Mexico	68.2%	$5,938	$8,708
	7111.00.00	Mexico	76.1%	$5,938	$7,802
	7307.91.30	Mexico	96.0%	$1,155,268	$1,202,854
	7319.20.00	Malaysia	50.6%	$1,191,802	$2,353,866
X	7401.10.00	Mexico	96.2%	$496,050	$515,728
	7409.11.10	Yugoslavia	73.1%	$267,677	$366,064
	7409.19.10	Mexico	64.2%	$2,776,266	$4,324,594
	7409.19.90	Mexico	72.8%	$4,057,820	$5,572,159
	7505.11.50	Mexico	50.0%	$211,921	$424,093

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LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1988

	HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	7505.12.50	Mexico	50.0%	$211,921	$424,093
	7614.10.50	Venezuela	53.4%	$3,798,195	$7,113,686
	7802.00.00	Mexico	60.7%	$1,551,189	$2,555,852
	7803.00.00	Mexico	53.9%	$1,003,752	$1,860,616
X RD	7903.10.00	Mexico	33.7%	$159,242	$472,272
X RD	7903.90.30	Mexico	33.7%	$3,025,601	$8,973,070
	8301.50.00	Mexico	51.1%	$1,903,502	$3,725,126
	8302.49.20	Mexico	54.2%	$504,888	$931,000
X D	8501.40.50	Mexico	75.2%	$4,940,398	$6,565,454
X D	8501.51.40	Mexico	75.2%	$3,952,316	$5,252,354
X D	8501.51.50	Mexico	75.2%	$988,079	$1,313,086
X	8535.10.00	Mexico	48.3%	$1,941,488	$4,015,675
	8540.12.40	Israel	87.4%	$825,565	$944,084
XNR	9025.11.20	Brazil	38.9%	$2,266,026	$5,826,030
	9025.11.20	India	51.7%	$3,012,411	$5,826,030
	9405.91.40	Mexico	70.4%	$1,152,014	$1,635,319
X RD	9504.20.60	Brazil	26.5%	$1,300,139	$4,902,709
	9506.61.00	Indonesia	49.6%	$1,073,504	$2,164,911
	9603.50.00	Mexico	50.9%	$1,167,406	$2,294,578
	9614.20.60	Turkey	72.4%	$57,949	$80,006
	9614.20.80	Turkey	83.3%	$212,154	$254,816

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LIST IV : POSSIBLE REDESIGNATION ITEMS
JAN-OCT 1988

	HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	0710.21.40	Mexico	0.2%	$17,483	$7,318,640
D	0710.80.65	Mexico	0.0%	$0	$0
D	0710.80.70	Mexico	27.9%	$415,719	$1,490,074
	0711.40.00	Mexico	23.9%	$9,159	$38,294
	1006.30.10	Mexico	0.0%	$0	$0
N	1007.00.00	Argentina	3.4%	$1,280	$37,699
N	1701.11.00	Brazil	5.4%	$16,937,905	$313,051,852
N	1701.12.00	Brazil	5.1%	$1,881,989	$36,855,132
N	1701.91.20	Mexico	0.0%	$0	$0
N	1701.99.00	Mexico	0.6%	$10,846	$1,694,943
N	1806.10.40	Brazil	0.0%	$0	$0
	1904.90.00	Mexico	0.0%	$0	$0
	2001.10.00	Mexico	23.9%	$906,633	$3,791,325
R	2005.10.00	Mexico	11.2%	$28,229	$253,038
R	2005.90.90	Mexico	20.8%	$2,794,567	$13,465,774
RD	2007.99.50	Brazil	19.7%	$358,294	$1,819,422
R	2208.90.45	Mexico	4.8%	$8,302,247	$174,526,871
N	2529.22.00	Mexico	33.3%	$12,878,649	$38,672,390
NR	2905.19.00	Brazil	24.8%	$1,696,189	$6,840,091
N	2906.11.00	Brazil	25.3%	$4,349,989	$17,196,013
D	2915.39.10	Mexico	49.4%	$442,076	$894,237
N	2915.70.00	Brazil	0.0%	$0	$0
NR	2916.15.50	Brazil	0.0%	$0	$0
N	2916.19.50	Brazil	0.0%	$557	$11,521,853
	2916.39.15	Bahamas	0.0%	$0	$0
NR	2917.13.00	Brazil	0.0%	$0	$0
NR	2917.14.10	Brazil	0.0%	$0	$0
NR	2917.19.50	Brazil	0.0%	$0	$0
NR	2918.11.10	Brazil	18.2%	$1,433,939	$7,859,632
	2918.22.50	Bahamas	0.0%	$0	$0
	2918.90.30	Bahamas	35.3%	$18,986,309	$53,823,873
	2924.29.39	Bahamas	0.8%	$766,229	$97,842,694
D	2933.19.35	Bahamas	35.3%	$493,151	$1,398,023
D	2933.90.31	Bahamas	35.3%	$1,232,877	$3,495,068
	3004.90.60	Bahamas	1.4%	$2,603,858	$181,399,997
	3004.90.60	Turkey	0.0%	$8,729	$181,399,997
R	3703.10.30	Brazil	17.6%	$21,295,330	$120,993,163
R	3703.20.30	Brazil	18.3%	$31,942,996	$174,105,896
R	3703.90.30	Brazil	0.0%	$0	$0
NR	3823.90.40	Brazil	0.0%	$0	$0
R	3921.13.50	Mexico	17.5%	$2,622,950	$15,004,079
	3921.90.50	Mexico	3.8%	$903,028	$23,784,634
	4011.10.00	Brazil	6.8%	$65,467,281	$956,816,294
	4011.20.00	Brazil	3.4%	$25,638,118	$745,380,980
	4011.40.00	Brazil	0.1%	$19,777	$28,495,349
	4011.91.50	Brazil	3.4%	$1,841,746	$53,838,794
	4011.99.50	Brazil	3.4%	$1,841,746	$53,838,794
	4012.10.50	Brazil	0.3%	$19,965	$6,235,116
N	4104.21.00	Argentina	25.8%	$2,635,017	$10,204,144
N	4104.22.00	Argentina	24.9%	$2,635,934	$10,593,457

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LIST IV : POSSIBLE REDESIGNATION ITEMS
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	HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
N	4104.29.50	Argentina	0.0%	$0	$0
N	4104.29.90	Argentina	0.0%	$0	$0
N	4104.31.50	Argentina	0.0%	$0	$0
	4104.31.60	Argentina	31.4%	$30,031,711	$95,653,656
N	4104.39.50	Argentina	0.0%	$0	$0
	4104.39.60	Argentina	35.8%	$30,714,077	$85,693,723
D	4106.12.00	India	40.5%	$1,809,000	$4,471,201
D	4106.19.00	India	40.4%	$1,809,492	$4,482,619
D	4106.20.30	India	40.3%	$1,863,819	$4,619,236
	4109.00.70	Argentina	40.5%	$8,683,095	$21,436,789
N	4411.19.40	Brazil	40.9%	$1,758,265	$4,295,699
N	4411.29.90	Brazil	44.3%	$2,449,062	$5,522,799
RD	5607.30.20	Mexico	12.2%	$592,631	$4,871,819
NR	6406.10.65	Brazil	10.1%	$14,543,517	$143,928,481
	6406.99.60	Argentina	44.4%	$11,315,238	$25,489,598
N	6905.10.00	Mexico	32.7%	$2,133,710	$6,532,976
R	6909.19.10	Mexico	0.1%	$29,175	$21,140,371
NR	6910.10.00	Brazil	17.1%	$8,017,951	$46,975,206
N	6910.10.00	Mexico	43.8%	$20,557,402	$46,975,206
NR	6910.90.00	Brazil	10.0%	$574,044	$5,742,383
N	6910.90.00	Mexico	18.3%	$1,048,733	$5,742,383
NR	6911.90.00	Brazil	2.0%	$374,918	$18,510,596
N	6911.90.00	Mexico	4.5%	$833,762	$18,510,596
N	6912.00.44	Brazil	8.5%	$7,197,594	$84,221,883
RD	7004.10.20	Mexico	0.8%	$27,913	$3,408,348
N	7113.19.21	Israel	1.1%	$105,706	$9,740,621
N	7113.20.21	Israel	1.1%	$11,746	$1,082,298
R	7114.11.70	Mexico	1.2%	$90,572	$7,536,765
R	7114.20.00	Mexico	1.3%	$143,294	$10,650,901
RD	7115.90.20	Mexico	1.1%	$45,341	$4,032,801
	7116.10.10	Thailand	25.5%	$51,988,961	$203,900,597
	7116.20.10	Thailand	25.4%	$51,991,841	$204,735,000
N	7202.11.10	Mexico	28.6%	$7,632,617	$26,667,385
N	7202.19.50	Mexico	28.6%	$2,544,206	$8,889,133
RD	7314.19.00	Mexico	19.1%	$2,140,661	$11,237,000
N	7320.10.00	Mexico	13.6%	$24,284,265	$178,804,369
N	7320.20.10	Mexico	13.6%	$1,278,120	$9,410,787
R	7402.00.00	Mexico	6.3%	$10,960,468	$174,869,371
N	7403.11.00	Peru	3.6%	$9,678,527	$270,145,462
N	7403.11.00	Zambia	0.0%	$0	$0
N	7403.12.00	Peru	3.6%	$7,258,897	$202,609,115
N	7403.12.00	Zambia	0.0%	$0	$0
N	7403.13.00	Peru	3.6%	$4,839,264	$135,072,730
N	7403.13.00	Zambia	0.0%	$0	$0
N	7403.19.00	Peru	3.6%	$2,419,632	$67,536,382
N	7403.19.00	Zambia	0.0%	$0	$0
N	7403.21.00	Peru	28.1%	$1,780,256	$6,327,772

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LIST IV : POSSIBLE REDESIGNATION ITEMS
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	HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
N	7403.21.00	Zambia	0.0%	$0	$0
N	7403.22.00	Peru	28.1%	$890,129	$3,163,888
N	7403.22.00	Zambia	0.0%	$0	$0
N	7403.23.00	Peru	28.1%	$1,335,193	$4,745,835
N	7403.29.00	Peru	20.4%	$445,064	$2,183,607
N	7403.29.00	Zambia	0.0%	$0	$0
N	7608.10.00	Brazil	0.8%	$24,544	$2,931,477
N	7608.20.00	Brazil	0.8%	$77,508	$9,205,286
N	7609.00.00	Brazil	0.8%	$25,836	$3,092,531
D	8406.11.90	Israel	23.1%	$661,620	$2,868,787
D	8406.19.90	Israel	23.1%	$661,620	$2,868,787
D	8406.90.90	Israel	23.1%	$882,160	$3,825,041
N	8407.32.20	Brazil	1.9%	$299,528	$15,840,148
	8407.32.20	Mexico	27.1%	$4,289,208	$15,840,148
N	8407.33.20	Brazil	2.5%	$281,416	$11,268,739
	8407.33.20	Mexico	38.1%	$4,288,908	$11,268,739
N	8407.34.20	Brazil	1.4%	$26,745,174	$1,976,092,099
	8408.10.00	Brazil	0.1%	$36,528	$50,306,851
R	8408.20.90	Brazil	10.9%	$15,734,183	$143,741,958
R	8408.90.90	Brazil	10.9%	$15,734,183	$143,741,958
	8409.91.92	Brazil	0.0%	$0	$0
R	8409.91.92	Mexico	9.8%	$9,498,768	$96,784,141
R	8409.91.99	Brazil	0.9%	$1,265,531	$138,823,699
R	8409.91.99	Mexico	4.4%	$6,086,678	$138,823,699
R	8409.99.91	Brazil	9.3%	$14,880,646	$159,969,262
R	8409.99.92	Brazil	0.0%	$0	$0
	8430.31.00	Brazil	0.0%	$15,848	$25,336,815
	8430.39.00	Brazil	0.0%	$3,170	$8,460,764
	8411.91.90	Brazil	0.0%	$97,017	$952,525,384
R	8411.99.90	Brazil	0.0%	$147,656	$379,639,298
R	8414.51.00	Mexico	1.6%	$7,786,250	$479,557,946
R	8414.59.80	Mexico	16.3%	$31,843,058	$195,675,473
R	8414.60.00	Mexico	20.6%	$674,853	$3,275,064
R	8414.90.10	Mexico	6.4%	$6,710,660	$105,299,437
R	8415.10.00	Mexico	2.7%	$5,558,648	$207,216,730
R	8415.81.00	Mexico	16.9%	$7,400,698	$43,863,653
R	8415.83.00	Mexico	22.7%	$26,017,919	$114,752,795
N	8419.11.00	Israel	0.9%	$36,394	$4,252,760
N	8419.19.00	Israel	3.3%	$912,917	$27,543,907
N	8419.90.10	Israel	3.4%	$100,087	$2,902,941
R	8421.23.00	Brazil	1.9%	$1,249,996	$65,453,110
R	8421.23.00	Mexico	1.0%	$625,634	$65,453,110
R	8421.31.00	Brazil	2.4%	$1,124,170	$46,433,224
R	8421.31.00	Mexico	0.9%	$440,575	$46,433,224
N	8424.20.10	Mexico	38.4%	$8,865,303	$23,084,533
N	8424.90.10	Mexico	38.4%	$985,036	$2,564,979
	8425.20.00	Mexico	0.3%	$12,494	$4,121,867
R	8425.31.00	Mexico	9.4%	$1,641,650	$17,480,023
R	8425.41.00	Mexico	0.3%	$78,922	$24,153,038
R	8425.42.00	Mexico	1.6%	$986,236	$60,357,151

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	HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	8426.12.00	Mexico	18.8%	$3,510,774	$18,668,783
R	8426.19.00	Mexico	12.2%	$2,194,233	$18,012,124
R	8426.20.00	Mexico	18.8%	$5,266,158	$28,003,169
R	8426.30.00	Mexico	18.8%	$4,388,466	$23,336,047
R	8426.41.00	Mexico	18.8%	$2,194,233	$11,668,015
R	8426.49.00	Mexico	18.8%	$2,194,233	$11,668,015
R	8426.91.00	Mexico	18.5%	$4,388,466	$23,720,822
R	8426.99.00	Mexico	23.4%	$2,996,317	$12,782,323
R	8428.10.00	Mexico	0.1%	$6,476	$7,402,543
R	8428.20.00	Mexico	0.0%	$11,162	$59,296,405
	8428.31.00	Mexico	0.1%	$5,291	$8,643,293
	8428.32.00	Mexico	0.0%	$1,361	$4,347,390
	8428.33.00	Mexico	0.2%	$34,758	$21,214,927
	8428.39.00	Mexico	0.0%	$5,016	$44,824,496
R	8428.40.00	Mexico	0.1%	$4,317	$4,935,028
R	8428.50.00	Mexico	18.8%	$4,388,466	$23,336,047
R	8428.60.00	Mexico	18.8%	$1,316,540	$7,000,811
R	8428.90.00	Mexico	14.7%	$11,848,861	$80,834,629
R	8429.11.00	Brazil	6.5%	$5,654,919	$87,113,394
R	8429.19.00	Brazil	6.5%	$883,584	$13,611,493
R	8429.20.00	Brazil	6.5%	$2,650,744	$40,834,421
R	8429.30.00	Brazil	6.5%	$883,584	$13,611,493
R	8429.40.00	Brazil	6.5%	$1,413,730	$21,778,342
	8429.51.50	Brazil	1.0%	$1,730,706	$175,885,601
R	8429.52.50	Brazil	6.5%	$2,120,597	$32,667,527
R	8429.59.50	Brazil	6.5%	$1,413,730	$21,778,342
R	8430.10.00	Brazil	6.5%	$353,433	$5,444,588
R	8430.20.00	Brazil	6.5%	$883,584	$13,611,493
R	8430.41.00	Brazil	1.3%	$176,713	$13,561,439
R	8430.49.80	Brazil	2.8%	$176,713	$6,335,350
R	8430.50.50	Brazil	6.5%	$353,433	$5,444,588
R	8430.61.00	Brazil	6.5%	$176,713	$2,722,294
R	8430.62.00	Brazil	6.5%	$176,713	$2,722,294
R	8430.69.00	Brazil	6.5%	$353,433	$5,444,588
R	8431.10.00	Mexico	2.8%	$2,519,634	$89,291,068
R	8431.31.00	Mexico	17.0%	$7,662,774	$45,164,001
R	8431.39.00	Mexico	2.6%	$3,629,876	$136,997,265
R	8431.41.00	Brazil	3.6%	$15,277,080	$425,118,097
R	8431.42.00	Brazil	3.6%	$7,638,545	$212,559,254
R	8431.43.80	Brazil	3.6%	$1,273,096	$35,426,620
R	8431.49.10	Mexico	6.1%	$3,343,435	$54,647,210
R	8431.49.90	Brazil	3.3%	$1,273,096	$38,430,283
R	8465.94.00	Brazil	0.5%	$241,772	$50,599,210
	8465.94.00	Mexico	0.3%	$132,023	$50,599,210
	8470.40.00	Mexico	7.1%	$13,566,207	$190,287,857
	8471.20.00	Mexico	7.7%	$57,363,428	$749,190,325
	8471.99.30	Mexico	15.4%	$1,288,875	$8,380,741
N	8473.21.00	Mexico	1.1%	$641,875	$59,296,679
N	8473.29.00	Mexico	1.1%	$213,964	$19,765,663
N	8473.30.80	Mexico	1.2%	$3,446,068	$279,293,364

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	HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	8473.40.20	Mexico	0.0%	$0	$0
	8473.40.40	Mexico	0.0%	$0	$0
R	8479.10.00	Brazil	0.5%	$1,128,260	$236,129,427
	8479.10.00	Mexico	0.3%	$616,089	$236,129,427
R	8479.30.00	Brazil	0.5%	$805,901	$168,664,154
	8479.30.00	Mexico	0.3%	$440,064	$168,664,154
R	8479.81.00	Brazil	0.5%	$1,128,260	$236,129,427
	8479.81.00	Mexico	0.3%	$616,089	$236,129,427
R	8479.82.00	Brazil	0.5%	$1,208,852	$252,995,956
	8479.82.00	Mexico	0.3%	$660,099	$252,995,956
R	8479.89.70	Brazil	0.0%	$0	$0
	8479.89.70	Mexico	0.0%	$0	$0
R	8479.89.90	Brazil	0.4%	$1,208,852	$305,288,480
	8479.89.90	Mexico	0.2%	$660,099	$305,288,480
R	8479.90.40	Brazil	0.0%	$0	$0
R	8479.90.80	Brazil	0.0%	$0	$0
R	8483.10.10	Brazil	7.0%	$8,934,272	$127,599,572
R	8483.10.10	Mexico	4.3%	$5,548,843	$127,599,572
R	8483.10.30	Brazil	6.9%	$7,135,906	$103,900,117
	8501.20.40	Mexico	0.7%	$169,211	$22,944,434
	8501.20.50	Mexico	0.7%	$8,905	$1,207,641
	8501.31.40	Mexico	14.9%	$12,563,709	$84,134,384
	8501.31.50	Mexico	15.1%	$661,251	$4,377,507
	8501.31.80	Mexico	0.1%	$1,906	$3,071,992
	8501.32.60	Mexico	0.3%	$9,358	$3,466,766
	8501.33.60	Mexico	0.3%	$4,738	$1,623,059
	8501.34.60	Mexico	0.0%	$0	$0
	8501.61.00	Mexico	0.3%	$14,266	$5,196,240
	8501.62.00	Mexico	0.3%	$14,370	$5,128,792
	8501.63.00	Mexico	0.1%	$2,284	$1,594,113
	8501.64.00	Mexico	0.0%	$14,080	$81,224,603
	8502.11.00	Mexico	0.0%	$0	$0
	8502.12.00	Mexico	0.0%	$0	$0
	8502.13.00	Mexico	0.0%	$0	$0
	8502.20.00	Mexico	0.0%	$26,367	$63,473,559
	8502.30.00	Mexico	0.0%	$9,790	$101,537,134
	8502.40.00	Mexico	26.5%	$9,903,412	$37,429,076
	8503.00.60	Mexico	17.8%	$45,347,635	$254,630,228
	8504.50.00	Mexico	45.7%	$60,697,242	$132,752,746
	8504.90.00	Mexico	16.5%	$30,001,705	$181,399,848
N	8507.30.00	Mexico	21.9%	$53,499,869	$244,332,798
N	8507.40.00	Mexico	2.5%	$111,837	$4,476,039
N	8507.80.00	Mexico	2.6%	$559,194	$21,880,862
N	8507.90.80	Mexico	2.5%	$447,353	$17,571,124
	8511.10.00	Mexico	1.5%	$957,492	$65,422,186
	8511.20.00	Mexico	4.9%	$511,924	$10,529,046
	8511.30.00	Mexico	3.9%	$1,157,687	$30,049,131
	8511.40.00	Mexico	2.9%	$4,110,052	$140,087,487
	8511.50.00	Mexico	19.6%	$29,956,123	$152,629,730
	8511.80.60	Mexico	5.0%	$2,559,618	$50,757,796

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	8511.90.60	Mexico	5.5%	$7,026,029	$128,290,781
	8512.40.40	Brazil	0.0%	$0	$0
N	8512.90.70	Mexico	41.0%	$1,806,205	$4,401,244
	8512.90.90	Brazil	0.0%	$0	$0
	8512.90.90	Mexico	0.0%	$0	$0
N	8516.90.60	Mexico	41.0%	$15,352,716	$37,410,230
	8519.91.00	Brazil	0.0%	$0	$0
	8519.91.00	Mexico	0.3%	$267,984	$94,615,012
	8519.99.00	Brazil	0.0%	$0	$0
R	8523.11.00	Mexico	18.6%	$30,356,478	$162,785,359
R	8523.12.00	Mexico	8.7%	$2,672,273	$30,851,986
R	8523.13.00	Mexico	2.1%	$12,360,008	$600,106,096
R	8523.90.00	Mexico	16.1%	$4,763,995	$29,542,037
	8527.11.11	Brazil	0.0%	$0	$0
	8527.11.11	Mexico	0.0%	$22,750	$265,487,016
R	8527.31.40	Brazil	0.0%	$90,875	$685,031,371
	8527.31.40	Mexico	0.6%	$4,093,022	$685,031,371
	8534.00.00	Mexico	2.5%	$13,336,998	$538,535,330
	8535.10.00	Mexico	48.3%	$1,941,488	$4,015,675
	8535.21.00	Mexico	1.6%	$77,841	$4,904,401
	8535.29.00	Mexico	0.0%	$0	$0
	8535.30.00	Mexico	17.6%	$3,948,937	$22,445,693
	8535.40.00	Mexico	18.1%	$8,665,944	$47,935,943
	8535.90.00	Mexico	17.9%	$11,750,179	$65,596,625
	8536.10.00	Mexico	28.1%	$11,154,867	$39,717,865
	8536.20.00	Mexico	18.3%	$14,247,469	$77,923,337
	8536.30.00	Mexico	16.8%	$8,968,096	$53,264,513
	8536.41.00	Mexico	19.6%	$31,152,137	$157,494,736
	8536.49.00	Mexico	15.3%	$8,491,471	$55,583,591
	8536.61.00	Mexico	38.5%	$6,504,644	$16,885,299
	8536.90.00	Mexico	12.1%	$22,131,434	$182,502,250
	8537.10.00	Mexico	15.5%	$43,267,950	$278,853,832
	8537.20.00	Mexico	16.4%	$35,015,972	$213,230,014
	8538.10.00	Mexico	18.1%	$25,997,818	$143,807,378
	8538.90.00	Mexico	18.1%	$25,997,818	$143,835,416
	8539.10.00	Mexico	35.6%	$13,486,832	$37,929,863
R	8539.90.00	Mexico	7.0%	$3,480,642	$49,626,500
	8543.10.00	Mexico	0.0%	$0	$0
R	8543.20.00	Mexico	7.0%	$6,961,284	$99,252,975
R	8543.30.00	Mexico	3.6%	$3,612,665	$100,225,710
R	8543.80.90	Mexico	6.8%	$23,615,872	$348,586,958
R	8543.90.80	Mexico	7.0%	$19,491,561	$277,941,106
	8544.20.00	Mexico	19.4%	$8,706,822	$44,996,241
	8544.41.00	Mexico	29.6%	$26,093,958	$88,138,512
N	8544.51.40	Mexico	15.6%	$2,809,108	$17,980,351
	8544.60.20	Mexico	33.7%	$8,697,985	$25,841,359
N	8547.90.00	Brazil	0.1%	$5,887	$7,502,828
R	8548.00.00	Mexico	7.0%	$11,834,171	$169,735,146
N	8605.00.00	Mexico	25.1%	$306,986	$1,221,027
N	8606.10.00	Mexico	25.1%	$613,970	$2,442,051

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N	8606.20.00	Mexico	25.1%	$613,970	$2,442,051
N	8606.30.00	Mexico	25.1%	$1,227,941	$4,884,099
N	8606.91.00	Mexico	25.1%	$2,148,897	$8,547,177
N	8606.92.00	Mexico	25.1%	$613,970	$2,442,051
N	8606.99.00	Mexico	25.1%	$613,970	$2,442,051
	8708.10.00	Brazil	0.5%	$1,651,576	$308,890,269
	8708.10.00	Mexico	0.1%	$204,137	$308,890,269
	8708.21.00	Brazil	0.0%	$14,721	$265,161,017
	8708.29.00	Brazil	0.5%	$1,635,756	$347,455,199
	8708.29.00	Mexico	6.6%	$22,807,094	$347,455,199
	8708.31.50	Brazil	6.4%	$38,489,311	$605,322,620
	8708.31.50	Mexico	3.7%	$22,127,343	$605,322,620
	8708.39.50	Brazil	5.9%	$15,957,817	$271,823,846
	8708.39.50	Mexico	8.3%	$22,548,415	$271,823,846
	8708.40.10	Brazil	0.0%	$70,690	$405,382,763
	8708.40.10	Mexico	0.3%	$1,078,018	$405,382,763
	8708.40.20	Brazil	0.1%	$982,618	$781,884,406
	8708.40.20	Mexico	0.1%	$949,147	$781,884,406
	8708.40.50	Brazil	13.8%	$16,780,748	$121,395,743
	8708.40.50	Mexico	5.8%	$6,993,872	$121,395,743
	8708.50.50	Brazil	1.9%	$1,078,163	$57,345,763
	8708.50.50	Mexico	5.6%	$3,232,863	$57,345,763
	8708.50.80	Brazil	3.5%	$1,078,163	$30,457,358
	8708.50.80	Mexico	10.6%	$3,232,863	$30,457,358
	8708.60.50	Brazil	3.5%	$1,078,163	$30,457,358
	8708.60.50	Mexico	10.6%	$3,232,863	$30,457,358
	8708.60.80	Brazil	1.7%	$440,691	$26,043,113
	8708.60.80	Mexico	0.2%	$51,725	$26,043,113
	8708.70.80	Brazil	4.2%	$18,328,822	$436,388,482
	8708.70.80	Mexico	2.4%	$10,518,458	$436,388,482
	8708.80.50	Brazil	2.9%	$3,402,608	$116,172,432
	8708.80.50	Mexico	0.5%	$557,837	$116,172,432
	8708.91.50	Brazil	0.2%	$328,212	$145,918,886
	8708.91.50	Mexico	21.4%	$31,273,780	$145,918,886
	8708.93.50	Brazil	1.9%	$1,115,838	$58,977,365
	8708.93.50	Mexico	6.1%	$3,600,018	$58,977,365
	8716.90.50	Brazil	4.3%	$2,877,709	$67,440,073
	8716.90.50	Mexico	6.9%	$4,673,789	$67,440,073
N	9008.90.40	Mexico	0.6%	$80,434	$12,432,440
N	9009.90.00	Mexico	0.4%	$2,728,237	$773,522,053
	9013.20.00	Mexico	0.0%	$0	$0
N	9018.39.00	Mexico	25.9%	$20,849,442	$80,510,798
	9021.90.80	Mexico	0.0%	$0	$0
N	9025.19.00	Mexico	14.1%	$4,184,778	$29,590,289
	9113.10.00	Thailand	0.0%	$0	$0
NR	9303.30.40	Brazil	3.1%	$27,720	$893,039
	9401.20.00	Mexico	22.9%	$41,033,975	$178,837,642
	9403.40.60	Mexico	0.0%	$0	$0
	9403.50.60	Mexico	0.0%	$0	$0
	9403.90.10	Mexico	9.1%	$2,051,701	$22,518,460

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D = DENIED de MINIMIS WAIVER IN LAST REVIEW

LIST IV : POSSIBLE REDESIGNATION ITEMS
JAN-OCT 1988

	HTS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	9405.10.80	Mexico	7.0%	$696,127	$9,925,292
R	9405.20.80	Mexico	7.0%	$696,127	$9,925,292
R	9405.40.80	Mexico	7.0%	$696,127	$9,925,292
N	9405.91.20	Mexico	28.2%	$7,033,363	$24,914,966
R	9508.00.00	Brazil	0.5%	$80,591	$16,866,462
	9508.00.00	Mexico	0.3%	$44,008	$16,866,462
R	9613.80.20	Mexico	7.0%	$696,127	$9,936,466
R	9613.90.40	Mexico	7.0%	$696,127	$9,925,292

R = REDUCED LIMIT APPLIES; N = NOT REDESIGNATED IN LAST REVIEW
W = COMPETITIVE NEED LIMITS WAIVED
D = DENIED de MINIMIS WAIVER IN LAST REVIEW

[FR Doc. 89-4855 Filed 3-1-89; 8:45 am]
BILLING CODE 3190-01-C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Trans Continental Airlines, Inc. for Certificate of Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (Order 89–2–46) Dockets 45908 and 45909.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Trans Continental Airlines, Inc. fit, and awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air transportation of persons and property.

DATE: Persons wishing to file objections should do so no later than March 14, 1989.

ADDRESSES: Objections and answers to objections should be filed in Dockets 45908 and 45909 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Delores King, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: February 27, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–4890 Filed 3–1–89; 8:45 am]

BILLING CODE 4910–62–M

Fitness Determination of Pocono Airlines, Inc., Trans World Express

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order 89–2–47, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Pocono Airlines, Inc. d/b/a Trans World Express (as reorganized) fit, willing, and able to provide commuter air service under section 419(d)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy L. Cooperstein, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: February 27, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–4891 Filed 3–1–89; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Air Traffic Control Tower; Commissioning

Notice is hereby given that on May 15, 1989, through September 30, 1989, the airport traffic control tower at the Martha's Vineyard Airport, Martha's Vineyard, Massachusetts, will be commissioned as a part-time Federal Aviation Administration (FAA) facility. Tower hours of operation will be established in advance by a Notice to Airmen, and thereafter published in the Airman's Information Manual. The designated facility identification for the FAA airport control tower will be: VINEYARD TOWER.

This information will be reflected in the FAA organization statement.

Communications to the tower should be directed to: Mr. Edwin S. Askew, Manager, Cape Hub, Federal Aviation Administration, Airport Traffic Control Tower, RFD, Martha's Vineyard Airport, Box 31, Vineyard Haven, Massachusetts 02568 (Telephone No. (617) 693–1170).

(49 U.S.C. 1348 and 1354(a): 49 USC 106(g) (Revised Pub. L. 97–449 (January 12, 1983)))

James I. Lucas,

Manager, Air Traffic Division, New England Region.

[FR Doc. 89–4834 Filed 3–1–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 24, 1989.

The Department of Treasuary has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Interal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Focus Group Interviews Concerning IRS Television Commercials.
Description: The group interviews are necessary to evaluate how the television commercials are communicating to the public, assess their effect on IRS image and assess their ability to motivate consumers to file promplty or use the tax assistance program. The results will provide guidance for further development of the commercials. Affected public is 90 participants.
Respondents: Individuals or households.
Estimated Number of Respondents: 90.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: One-time interviews.
Estimted Total Recordkeeping/ Reporting Burden: 180 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–4804 Filed 3–1–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 24, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this

information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0149.
Form Number: None.
Type of Review: Extension.
Title: OCC Salary Survey of National Banks.
Description: Two questionnaires are used to solicit pertinent salary program information from national banks who voluntarily participate in the salary survey. The information developed is used to help administer the OCC Compensation Program salary schedule and merit pay plan.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 166.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 332 hours.
Clearance Officer: John Ference, (202) 447–1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 4805 Filed 3–1–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 4, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Survey to Evaluate the IRS Understanding Taxes Program.
Description: The data collected will be used to evaluate the usefulness and effectiveness of the Teacher's Resource Package requested by teachers to teach students about taxes.
Respondents: Individuals or households.
Estimated Number of Respondents: 570.
Estimated Burden Hours Per Response: 20 minutes.
Frequency of Response: One-time survey.
Estimated Total Recordkeeping/ Reporting Burden: 190 hours.
OMB Number: 1545–0768.
Form Number: None.
Type of Review: Extension.
Title: Employers' Qualified Educational Assistance Programs.
Description: The affected public includes employers who maintain educational assistance programs and their employees. The employer must set forth the terms of the program in a separate written plan. Eligible employees must be given notification of the terms and availability of the program. Employees may be required to substantiate eligibility to receive benefits.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Response/ Recordkeeping: 1 hour.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 615 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–4806 Filed 3–1–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: February 24, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0068.
Form Number: None.
Type of Review: Reinstatement.
Title: Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.
Description: The information is needed to establish an investor's Treasury security account; to dispose of securities upon the owner's request; and to determine entitlement to securities. The information will be used for those purposes. Respondents will be primarily individuals, although there may be some organizations and public bodies.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 75,000.
Estimated Burden Hours Per Response: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 15,000.
Clearance Officer: Nancy Veret (202) 376–3902, Bureau of the Public Debt, Room 445, 999 E Street NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–4807 Filed 3–1–89; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 40
Thursday, March 2, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 2, 1989, 10:00 a.m.

By direction of the Federal Election Commission, the Open Meeting scheduled for March 2, 1989 is cancelled.

DATE AND TIME: Tuesday, March 7, 1989, 2:00 p.m.

PLACE: 999 E. Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 9, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE DISCUSSED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certification for Payment of 1988 Primary Matching Funds.
Explanation and Justification of the Regulation Governing Trade Association Solicitation of Parent and Subsidiary Corporations: 11 CFR 114.8(f)
Final Audit Report on Pete du Pont for President.
Legislative Recommendations
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 89-4977 Filed 2-28-89; 12:14 pm]
BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, March 8, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: February 28, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-5000 Filed 2-28-89; 2:41 p.m.]
BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Monday, March 6, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Monday, March 6

10:00 a.m.
Briefing on Operator Training (Public Meeting)
2:30 p.m.
Briefing on Status of Generic Issues (Public Meeting)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,
Office of the Secretary.
[FR Doc. 89-4986 Filed 2-28-89; 2:23 pm]
BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 54, No. 40
Thursday, March 2, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Dichlorophene and Toluene Capsules

Correction

In rule document 89-3382 beginning on page 6658 in the issue of Tuesday, February 14, 1989, make the following correction:

On page 6658, in the 3rd column, under **SUPPLEMENTARY INFORMATION**, in the 10th and the 11th lines, "21 CFR 250.580(b)(1)" should read "21 CFR 520.580(b)(1)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0003]

Collagen Corp.; Premarket Approval of Alveoform™ Biograft

Correction

In notice document 89-3493 beginning on page 6967 in the issue of Wednesday, February 15, 1989, make the following correction:

On page 6967, in the third column, under **SUMMARY**, in the sixth line, "Alveform™" should read "Alveoform™".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 840

[Docket No. R-88-1356; FR-2385]

Supportive Housing Demonstration Program

Correction

In rule document 88-14288 beginning on page 23898 in the issue of Friday, June 24, 1988, make the following correction:

§ 840.5 [Corrected]

On page 23905, in the third column, in § 840.5, in the definition for "*Operating costs*", under "(d)", in the third line, after "does" insert "not".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program, Board of Scientific Counselor's Meeting

Correction

In notice document 89-4190, appearing on page 7887, in the issue of Thursday, February 23, 1989, make the following correction:

The date that appears in the 9th and 10th lines of the first paragraph should read " March 14, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting on Federal Indian Reservations and Ceded Lands

Correction

In proposed rule document 89-4447 beginning on page 8221 in the issue of Monday, February 27, 1989, make the following correction:

On page 8221, in the third column, under **FOR FURTHER INFORMATION CONTACT**, the sixth line should read, "[Telephone (703) 358-1714]."

BILLING CODE 1505-01-D

federal register

Thursday
March 2, 1989

Part II

Department of Transportation

Office of the Secretary

Federal Highway Administration

49 CFR Part 24

Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs; Final Rule and Notice

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. 87-22]

RIN 2125-AB 85

Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This regulation establishes a governmentwide single rule for the implementation of statutory amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) made by the Uniform Relocation Act Amendments of 1987 Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (1987 Amendments), Pub. L. 100-17, 101 Stat. 246-256. The Uniform Act applies to all Federal or federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacements caused by rehabilitation and demolition activities. This regulation is intended to ensure that the implementation of the Uniform Act by Federal agencies is, in fact, as uniform and consistent as possible, while encouraging State and local discretion in implementing the Uniform Act's provisions.

DATE: This regulation is effective March 2, 1989. Further information concerning agency implementation is provided below.

FOR FURTHER INFORMATION CONTACT: F.D. Luckow, Chief, Program Requirements Division, Office of Right-of-Way, HRW-10, (202) 366-0116; or Reid Alsop, Office of the Chief Counsel, HCC-40, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

This regulation is the final step in the development of a governmentwide single rule for implementing the Uniform Act. The background of this development is described in considerable detail in the preamble to the interim final rule issued on December 17, 1987 (52 FR 47994), and the Notice of Proposed Rulemaking (NPRM), issued on July 21, 1988 (53 FR 27598), and is not repeated here.

On February 27, 1985, a Presidential Memorandum was signed and published in the **Federal Register** on March 5, 1985 (50 FR 8953), naming the Department of Transportation (DOT) as the agency with lead responsibility for the Uniform Act. This led to the publication of a multi-agency governmentwide common rule on February 27, 1986 (51 FR 7000).

The 1987 Amendments named the DOT as lead agency. The Secretary of the Department of Transportation has delegated this responsibility to the Federal Highway Administration (FHWA). The 1987 Amendments require the lead agency, in coordination with other Federal agencies, to issue rules, establish procedures and make interpretations to implement provisions of the Uniform Act.

Implementation of the 1987 Amendments

On Tuesday, May 19, 1987 (52 FR 18768) the FHWA issued a Notice describing significant changes in the law and general plans to implement those changes. On Tuesday, December 1, 1987 (52 FR 45667) the FHWA issued a Notice of Regulatory Intent giving further notice of the specific regulatory actions that it and the other affected Federal agencies would take to implement the 1987 Amendments.

A few provisions of the 1987 Amendments upon which the law is explicit and allows for little, if any, administrative discretion or interpretation, and for which a period of public notice and comment would have been impractical, were implemented in an interim final rule in Part 24 issued by FHWA (52 FR 47994), on December 17, 1987.

On the same day (52 FR 48015) 17 Federal Departments and agencies that administer the Uniform Act, and had adopted the governmentwide common rule, published interim final rules rescinding the governmentwide common rule from the codification of their regulations and adopting in its place a cross-reference to the governmentwide single regulation published by FHWA at 49 CFR Part 24. The effective date for these agency rescissions and cross references varied, however all such actions were to take effect on or before April 2, 1989, the date the 1987 Amendments become mandatory.

An eighteenth Federal Department, the Department of Housing and Urban Development (HUD), was unable to join the other Federal agencies in publishing an interim final rescission and cross referencing action on December 17, 1987, because of its need to first satisfy certain Congressional review obligations. HUD subsequently published such an interim rule on February 19, 1988 (53 FR 4964).

As discussed in the preamble to the NPRM, no comments were received that objected to the use of the rescission and cross-referencing actions by the various Federal agencies concerned to establish a governmentwide single regulation. The only relevant comment objected to the effective date of HUD's rescission and cross-referencing action. HUD considered that comment but does not believe it is feasible to change the date for administrative reasons, in order to best achieve a smooth transition to the new requirements of the 1987 Amendments.

The objective of the February 27, 1985 Presidential memorandum, and one of the primary goals of the 1987 Amendments, was to establish governmentwide uniformity so as to eliminate the differences and inconsistencies among Federal agencies that had plagued Federal implementation of the Uniform Act since its enactment in 1971. These differences and inconsistencies had been particularly burdensome to State and local governments that were administering a variety of Federal programs, and also, in some cases, resulted in differences in the benefits provided to persons in like circumstances.

The 1987 Amendments clearly provide that a single Federal lead agency will promulgate a governmentwide single rule for the Uniform Act's implementation. Accordingly, other Federal agencies covered by the Act no longer have independent statutory authority to promulgate their own separate Uniform Act regulations and, in implementing the Uniform Act, must follow the regulations published by the lead agency. The Uniform Act is unique in that it imposes requirements directly upon a large number of Federal and Federally assisted programs, but assigns the authority for the publication of all necessary implementing regulations to one lead agency. (Of course, such regulations will continue to be developed with the participation of HUD and other Federal agencies).

Accordingly, because a governmentwide single regulation is required by law, because of the unique nature of the Uniform Act, because no comments were received, and because no useful purpose would be served by having 18 Federal agencies take additional regulatory action to formally finalize their rescission and cross-reference actions, the interim rescission

and cross-reference actions taken by such agencies should henceforth be considered final, and will remain in effect indefinitely.

Those departments and agencies, and the parts of the Code of Federal Regulations which contain a cross reference to this part, are listed below:

Department of Agriculture, 7 CFR Part 21
Department of Commerce, 15 CFR Part 11
Department of Defense, 32 CFR Part 259
Department of Education, 34 CFR Part 15
Department of Energy, 10 CFR Part 1039
Environmental Protection Agency, 40 CFR Part 4
Federal Emergency Management Agency, 44 CFR Part 25
General Services Administration, 41 CFR Part 105-51
Department of Health and Human Services, 45 CFR Part 15
Department of Housing and Urban Development, 24 CFR Part 42
Department of the Interior, 41 CFR Part 114-50
Department of Justice, 41 CFR Part 128-18
Department of Labor, 29 CFR Part 12
National Aeronautics and Space Administration, 14 CFR Part 1208
Pennsylvania Avenue Development Corporation, 36 CFR Part 904
Tennessee Valley Authority, 18 CFR Part 1306
Veterans Administration, 38 CFR Part 25

The United States Postal Service will incorporate changes in its full-text regulation at 39 CFR Part 777 to make it consistent with this rule and will publish its final rule on or before April 2, 1989 in the **Federal Register.**

Implementation Dates

This final rule replaces the December 17, 1987 interim final rule that was contained in 49 CFR Part 24. As is discussed further below, this final rule is basically the same as the interim final rule except for the addition of provisions implementing those sections of the 1987 Amendments that were not implemented in the interim final rule. This final rule is the last regulatory step in the implementation of the 1987 Amendments. The preamble to the interim final rule noted that "a final rule will replace this interim final rule prior to the date the 1987 Amendments become mandatory".

The rescission and cross reference actions taken by the agencies listed above provided for some differences in the dates when each agency would implement 49 CFR Part 24. (However all the agencies will adopt Part 24 on or before April 2, 1989, the date on which the 1987 Amendments become mandatory). Agency implementation of this final rule is therefore governed by the implementation dates for implementing 49 CFR Part 24 contained in the various agency's December 17, 1987 rescission and cross reference actions. Generally those actions provide that direct Federal projects, undertaken by a Federal agency itself, will comply with Part 24, and that federally assisted projects would comply with Part 24 if the recipient of the Federal financial assistance was able to comply, except that all programs funded by the Department of Housing and Urban Development and the Environmental Protection Agency would not comply with Part 24 until April 2, 1989.

As was the case with the interim final rule, nothing in this rule prohibits the retroactive payment of any additional benefits provided by this rule. Whether to provide any such benefits retroactively depends entirely on an agency's discretion and funding authorities.

Comments Received in Response to the NPRM

On Thursday, July 21, 1988 (53 FR 27598) the FHWA issued a NPRM for the purpose of developing a comprehensive, governmentwide single rule for the uniform and consistent implementation of the Uniform Act, as amended.

The major changes made by the 1987 amendments include:

—Expansion of the Uniform Act coverage to include virtually all activities that receive Federal funds, including those undertaken by private entities.

—A moderate increase in benefit levels.

—The establishment of a lead agency to issue a governmentwide single implementing regulation.

—Providing that the computation of certain relocation benefits be done in accordance with the lead agency regulations, rather than prescribing the computation method in the statute.

—Granting States greater flexibility and discretion in implementing the provisions of the Uniform Act.

All members of the public affected by relocation or land acquisition activities undertaken or funded by Federal agencies were encouraged to comment on this NPRM. Comments from interested State and local governments were particularly requested.

The NPRM was a "full text" rule primarily as a convenience to the reader. Comments were specifically requested and desired on changes stemming from the 1987 Amendments. Numerous commenters however took the opportunity to again express an opinion on certain issues that were addressed in the governmentwide common rule or in the governmentwide single interim final rule. As such, comments were exhaustively dealt with in the preambles to those rules (51 FR 7000 and 52 FR 8015) respectively; they are not repeated in this rulemaking.

A description of the regulatory changes proposed for this part were set forth in the NPRM. The only major changes proposed were those required by enactment of the 1987 Amendments. Where no such changes were required, the provisions of the governmentwide common rule, as modified by the December 17, 1987 interim final rule, were generally repeated in the proposed rule. That is, the proposed rule was basically the same as the common interim final rule with the exception of those additional changes that were considered necessary to fully implement the 1987 Amendments. Comments were invited on both those non-discretionary changes that were adopted in the December 17, 1987, interim final rule and the remaining changes proposed in the NPRM.

In furtherance of the statutory objective of securing the views of State and local governments and the public in the promulgation of these regulations, the FHWA conducted three public meetings during the comment period following publication of the proposed rule.

Dates for the meetings were August 17, 1988 in Philadelphia, Pennsylvania, August 22 in Portland, Oregon and August 24 in Chicago, Illinois.

The purpose of these meetings was to receive comments on the proposed rule from interested parties. These comments are entered in FHWA Docket No. 87-22 and have been given full consideration in the development of the final rule.

In response to the July 21, 1988 **Federal Register** publication, there were a total of 120 comments received at the docket, including those received at the 3 public meetings. These 120 comments represent 101 different organizations or persons: 31 State highway administrations, 4 other State level agencies, 19 local public agencies, 7 private parties, 5 public interest groups, 4 consultants, and 31 associations. Most of the associations represented utilities and were concerned primarily with their new responsibilities as acquiring agencies under the Act or with § 24.307, dealing with discretionary utility relocation payments. Comments received from several organizations involved in the rural electric cooperative industry relating to acquisition activities claimed a significant economic impact on the industry. However, careful analysis of the comments indicates that because of their unfamiliarity with the provisions of the Uniform Act, the

respondents have misunderstood certain of the requirements of the regulation.

Great care and attention have been given to these comments and as most of the apparent questions concern real property acquisition requirements, these comments have been extensively considered and discussed in § 24.101 (b) and (c) of this preamble.

There is no basis for expecting that reasonable compliance with this regulation as required by the 1987 Amendments will impose exceptional additional expenditures on the part of the members of the rural electric cooperative industry. A number of unnecessary administrative requirements found in earlier regulations have been eliminated with a consequent reduction in the burden on affected entities. Other requirements have been reduced or modified to further the goals of efficient and cost effective implementation of the Uniform Act.

More than 1,200 specific comments were received. Many of the comments were directed at provisions in the current governmentwide common rule, for which no changes were proposed in the NPRM, or provisions which are specifically determined by the statute. A large number of comments were general statements, or questions, regarding a section or subsection which required no change in the regulation but which are addressed in the appropriate section discussion following in this preamble.

A number of respondents had questions about operational details which cannot be addressed in the rule itself. FHWA will, however, respond to these and other concerns in forthcoming technical advisories and similar instructive memoranda.

Except as related to a few specific provisions, which are addressed at the appropriate places in the preamble, the vast majority of the public comments dealt more with clarification of interpretation than with substantive matters.

Some commenters suggested different wording or rearranging certain paragraphs within the rule itself. While a certain amount of such editorial refinement has been done when it was necessary for clarity, the FHWA recognizes that the basic format, as well as most of the specific provisions of this rulemaking were articulated in the governmentwide common rule, and acquiring and displacing agencies have become familiar with the existing format. To avoid confusion, we therefore have not made wholesale changes in format or location of the respective provisions in this rule merely for editorial preference.

Some comments suggested changes that are precluded by statute; however, we are cognizant of the concerns expressed in such comments. We are interested in the experiences gained by persons and agencies as they operate within the framework of this regulation, and will consider legislative changes, if necessary.

In addition, an early draft of the NPRM, the NPRM itself, and a draft of this final rule were each circulated to affected Federal agencies for their review and comment. Further, a number of meetings were held with representatives of interested Federal agencies. Many useful comments were provided during this process. We were particularly assisted by the time and expertise provided by HUD.

All comments were reviewed and appropriate changes to the proposed rule were made. A description of the substantive changes from the proposed rule follows. Other changes not affecting content were made for clarity or readability.

Section-by-Section Analysis

Subpart A—General

Section 24.1 Purpose

Paragraph (c) was proposed to establish efficient and cost effective implementation as one of the primary purposes of this regulation. Two of the three comments on the paragraph commended the inclusion of the paragraph while the other indicated misgivings that, without a definition or explanation of the intent of the paragraph, it may appear to some agencies that cost savings are more important than providing the assistance or protection due an owner or displaced person. This paragraph has been included in the final regulation to emphasize the Federal concern that State and local agencies not be burdened with unnecessary regulatory requirements in the implementation of the Uniform Act. For this reason, the NPRM preamble discussion of this paragraph called attention to the waiver provision of § 24.7 and its use to avoid unnecessary delay or administrative burdens. The waiver provision, in turn, is explicit regarding two major considerations. The first is that the Federal agency, before waiving any requirement, must determine that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this regulation. The second is that any request for a waiver shall be justified on a case-by-case basis. While FHWA does not interpret case-by-case to mean, necessarily, a parcel-by-parcel basis, neither does it encompass the waiver of a requirement on a program-wide scope. The broader the scope of the waiver, the more carefully the Federal agency must weigh its effect on the assistance and protection to be provided an owner or displaced person.

Section 24.2 Definitions

Section 24.2(a) Agency. There were several comments on this paragraph and as a result the paragraph on lead agency has been removed and is now a separate paragraph (§ 24.2) within the definitions.

Other respondents suggested deletions, expansions, or other changes in the remaining definitions. However, the definitions are taken from the statute and they remain unchanged. As explained in the preamble of the NPRM published in the **Federal Register** July 21, 1988, the term "Agency" is generally used throughout this part to encompass all entities subject to the Uniform Act.

Section 24.2(d) Comparable replacement dwelling. Comments were received from five entities concerning the definition of the term "comparable replacement dwelling." The term and its definition originate in the Uniform Act and the 1987 Amendments, as stated in the preamble of the NPRM. The terms "comparable style of living" and "functionally equivalent," taken together, mean that the comparable replacement dwelling selected for computing the replacement housing payment is located in the same, or same type of, residential development as the acquired dwelling, on a site typical in size for that development; is the same type of dwelling, i.e., single-family for single family, apartment for apartment, etc.; and provides the same or similar amenities within the dwelling. For example, if the displaced person entertains large groups frequently and the acquired dwelling is arranged to accommodate this living style, then the replacement comparable house should also be capable of being arranged in this fashion.

This does not, however, require strict and absolute adherence to an exhaustive, detailed, feature-by-feature comparison. A mechanistic approach is not required. Reasonable trade-offs can be made. These should reflect the range of purposes for which the various features of the replacement dwelling may be used. Additional discussion about this subject can be found in the appendix.

Section 24.2(d)(8)(i). A recommendation was received to change the word "paid" to "offered" in describing the replacement housing

payment provided to a 180-day owner-occupant. We have retained the current wording because the computation of the full price differential, as described in § 24.401(c), is limited to the lesser of the amount needed for purchase of a comparable replacement dwelling or the actual dwelling purchased.

Section 24.2(d)(8)(ii). This section has been revised to clarify that the utility costs for replacement rental housing will be based on estimated average monthly utility costs because the actual utility costs will not be available. For additional clarification of the issue of utility costs refer to the discussion in this preamble for § 24.402(b), Rental assistance payment.

Eight comments were received about the use of 30 percent of the gross monthly income for determining the financial means of displaced tenants. In accordance with the discussion in the preamble of the NPRM, FHWA examined this issue carefully before revising § 24.2(d)(8) and § 24.402 Replacement housing payment for 90-day occupants. The use of 30 percent of gross monthly income for all tenants, to meet the statutory requirement that the income of a low-income tenant be considered when computing a rental assistance payment, is still considered to be the most equitable, practical, and appropriate method. It is similar to the method used by many agencies such as State highway agencies prior to the Common Rule. Additional discussion of this issue is to be found in this preamble for § 24.402(b) Rental assistance payment.

Section 24.2(d)(8)(iii). Eleven comments were received about the possible eligibility of a less than 90-day occupant for a replacement housing payment under Housing of last resort. Most objected to this eligibility.

Persons who are in occupancy at the time of the initiation of negotiations, but who do not meet the length of occupancy requirements in §§ 24.401 or 24.402, are displaced persons and are entitled to advisory assistance and moving payments. They may, also, be entitled to rental assistance under housing of last resort provisions if comparable rental replacement housing is not available at a rent not greater than 30 percent of the person's gross monthly household income. This section provides financial means standards for a class of displaced persons heretofore called "subsequent occupants." When section 205 was amended in 1987, section 205(c)(3) was revised to require assurances that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling. Since an occupant of less than 90 days is a displaced person, the necessary criteria for providing a comparable replacement dwelling was developed. The use of the financial means criteria assure that the displaced person will participate in the cost of a comparable replacement dwelling to the maximum extent of his or her financial capability. In response to another comment, FHWA also addressed the appropriate use of the income of those receiving public assistance. If they receive an amount designated for shelter and utilities, then that is the amount that should be used in determining the displaced person's financial means.

Section 24.2(e) Contribute materially. Four comments were received about this definition. Two recommended that all the criteria would have to be present for the business to contribute materially to the income of a displaced person. This is clearly not the case. One preferred that the displacing agency be authorized to develop alternative criteria. This definition has remained as written. FHWA considers that sufficient flexibility has been permitted in the definition of "contribute materially" to accommodate unusual circumstances.

Section 24.2(f) Decent, safe, and sanitary dwelling. Two comments were received concerning the addition of "cooling" to the requirement for heating. If cooling is determined to be as critical as heating for a particular State or area, a displacing agency may, in a uniform manner, require that an adequate cooling system be provided in a comparable replacement dwelling.

Section 24.2(g)(2)(iv) Persons not displaced. The NPRM specifically requested comments on § 24.2(g)(2)(iv) as to whether certain tenants who are affected by HUD funded rehabilitation activities should be considered "displaced persons." Such tenants are those who are not required to move permanently because of the federally funded physical alteration of their dwelling units, or a change in the unit's ownership, but whose rents are increased following completion of the rehabilitation activities, resulting in the tenants moving elsewhere. The NPRM proposed that such tenants would not be included in the definition of "displaced person" if the other conditions included in § 24.2(g)(2)(iv) were satisfied. These conditions included the opportunity to lease and occupy another dwelling unit in the same building or complex (without regard to the amount of rent charged) and the payment of any temporary relocation costs.

Twenty-two comments were received on this subject. Seven recommended that these tenants be covered. Eight recommended the addition of a further condition mentioned in the NPRM, to provide that, so long as the tenant is offered an opportunity to rent a decent, safe, and sanitary dwelling for the same amount as the tenant paid before the rehabilitation project, or 30 percent of the household's gross income, whichever is greater, such tenant would not be considered a displaced person. Two commenters recommended retaining the language in the NPRM. Three commenters generally opposed considering such tenants as displaced persons. Finally, two comments concerned technical matters.

HUD recommended that this section be deleted from the regulation, but suggested that it could be covered in HUD's various program regulations so that coverage could be tailored to each affected HUD program. HUD continues to believe that these tenants are not covered by the Uniform Act because the rental increase that prompts their move is, in HUD's view, not a direct result of rehabilitation. However, HUD has indicated its willingness and desire to treat the financial hardship faced by such persons on a program-by-program basis, and to deal specifically with this issue in developing new regulations implementing its several programs assisting residential rehabilitation.

Since this issue affects only HUD funded activities, we believe that HUD's views should be given great weight. Accordingly, this section has been revised to include language similar to that contained in § ____.2(f)(2)(iii) of the common governmentwide rule. This would not preclude HUD from providing assistance to such persons in their various program regulations.

Section 24.2(g)(2)(viii). At the request of one Federal agency, we have changed the term "sells" to "conveys" in § 24.2(g)(2)(viii). Occasionally, Federal agencies acquire land through exchanges or other agreements that are not technically "sales."

Section 24.2(k) Initiation of negotiations. Several respondents commented on this section. Since it is not practical to try to identify what specifically constitutes the initiation of negotiations for each and every Federal, or federally assisted program, the definition must be somewhat generic. Nonetheless, the intent and purpose is reasonably clear. The prefatory paragraph addresses those situations in which specific Federal program regulations define the meaning of initiation of negotiations for that

program. For the bulk of the acquisition on Federal, or federally assisted programs, projects, or activities, the proposed definition is sufficient. We have added a definition of Notice of intent to acquire or notice of eligibility for relocation assistance, at § 24.2(o), which should help to clarify the meaning of initiation of negotiations and its relationship to entitlements under the Uniform Act. The two controlling points in this set of circumstances are the action or actions of the agency and the action of the displaced person. There must be a clear, legitimate and reasonable causal connection between the two. For example, a tenant moving on the basis of having learned his landlord had applied for a rehabilitation loan would not establish the tenant's eligibility for benefits.

Section 24.2(l) Lead agency. The definition of "lead agency" was inserted at this point in the definitions, and the following preamble discussion refers to the new section numbers for the definition in question.

Section 24.2(n) Nonprofit organization. The definition was revised to recognize that a non-profit organization must, in addition to having tax-exempt status under the Internal Revenue Code, be appropriately incorporated under the laws of a State as a non-profit organization.

Section 24.2(o) Notice of intent to acquire or notice of eligibility for relocation assistance. This added definition was discussed under § 24.2(k). The purpose of a notice of this nature is to clearly establish a displaced person's eligibility for relocation benefits. However, it should be understood that the absence of such a notice does not deprive the person of eligibility for relocation benefits. The Federal funding agency, within its own program or project requirements, should develop a procedure for the timely delivery of such notices to persons to be displaced, including those affected by activities undertaken prior to the commitment of Federal financial assistance to the activity.

Section 24.2(p) Programs or projects. In response to comments from two Federal agencies the definition of "project" has been revised. Because of the multiplicity of Federal and federally assisted programs and projects, a single definition must necessarily be extremely general. Each Federal agency will continue to have responsibility for identifying its programs and projects that are covered by the Uniform Act.

Section 24.2(t) Small business. A number of respondents commented on the definition of "small business." Specific comment on the 500 employee threshold was solicited and the responses ranged from one recommending a change to a dollar volume criterion; two recommending 20 employees; three recommending 50 employees; four recommending 100 employees; one recommending 250; one respondent recommended the threshold be eliminated and the payment be available to any and all businesses; two indicated concern, but had no threshold number; and ten indicated agreement with the 500 employee threshold. FHWA's use of a 500 employee threshold for a small business is in accordance with the Small Business Administration's current definition of small businesses. Since the purpose of the definition is to facilitate the application of the small business criterion to the eligibility requirements for business re-establishment payments, the definition remains unchanged except for the addition of the requirement that there must be at least one employee at the affected site.

Section 24.2(y) Unlawful occupancy. The definition of "unlawful occupancy" has been changed slightly to clarify its applicability. One commenter mentioned that local custom, type of tenancy and type of facility may dictate different practices in terms of dealing with unlawful occupants. This has been addressed in the modified language. The main point of the other substantive comments received on this definition actually dealt with the relationship of this provision to § 24.206, Eviction for cause. As these two provisions deal with basic eligibility issues, displacing agencies should be especially aware of the interrelationship. In response to comments, changes have been made in the eviction for cause provision which is discussed below at § 24.206. While the intent of this provision is to generally proscribe certain types of occupants, such as squatters, from eligibility for relocation payments, displacing agencies are permitted some discretion where specific circumstances may warrant a finding that the occupancy is lawful.

Section 24.2(z) Utility costs. There were eight comments on this paragraph, five recommended the addition of the cost of trash removal to utility costs. Due to the wide variance in local practices for trash removal ranging from "haul your own" to free government services, FHWA has not modified the definition of utility costs. All costs now included are generally furnished by public agencies.

Section 24.4 Assurances, monitoring and corrective action

Section 24.4(a) Assurances. Six comments were received on this section. One comment about the procedures for monitoring local public agencies conducting highway projects is more appropriately considered under the FHWA's program guidance. Two commenters were concerned about the effect of the regulatory language on their current procedures and practices. One agency also asked that the requirement for a "specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act" be deleted and, in its place, the lead agency request each State Attorney General to provide an opinion as to exceptions permissible under State law. This would, then, be provided to each State agency; presumably by the lead agency.

We believe the section on Assurances reflects the intent of sections 210 and 305 of the Uniform Act; provides reasonable uniformity for all Federal agencies; and should not impose any significant or time-consuming burden on those agencies with respect to the approval of a State agency's assurances. Neither the Uniform Act, nor this regulation, dictates the length (sentence, paragraph, or page) of a State agency's assurances. The Uniform Act requires that assurances be "satisfactory" and this regulation requires that assurances be "appropriate," and in accordance with sections 210 and 305, for displacing and acquiring agencies respectively. The Federal funding agency determines that the assurances meet these requirements.

Since it is likely that some State agencies may operate under statutes which could provide them with exceptions not available to other State agencies, we believe it necessary for the individual State agencies, on their own behalf, to identify any State law which provides them with an exception to section 301 or 302 of the Uniform Act.

One commenter may have misunderstood the relationship between the assurances and Subpart G, Certification, as well as the nature of the assurances. The assurances should not be viewed as an alternative to certification. If anything, it is the other way around and, even then, the certification must address the requirements of the Uniform Act covered by the assurances if the certifying State agency intends to assume those responsibilities. The assurances are, therefore, fundamental and it is anticipated that most State agencies will initially provide

assurances to ensure compliance with the Uniform Act rather than seek approval of a certification application. A State agency must provide these assurances, or obtain a certification, as set forth in both the Act and regulation, as a condition of receiving Federal financial assistance.

However, in response to a concern of the Department of Agriculture, agencies who acquire under the procedures for voluntary transactions, or persons without the power of eminent domain, will not be required to certify under section 305 of the Uniform Act. Any agency that displaces persons will have to provide assurances or be certified for compliance with section 210 of the Act.

The purpose for providing exceptions to the real property acquisition procedures in § 24.101(a) is to make it clear that not all acquisitions are subject to the requirements of Subpart B of this regulation. The section is intended to describe circumstances which would exclude specific acquisitions from the application of the regulation; it is not intended to provide the basis for the exclusion of an entire agency program.

Section 24.5 Manner of Notice

Two comments were received on this section, which is unchanged from previous requirements in both the Common and the Interim Final Rules. One comment approved of the requirement and the other comment suggested that the notice to the owner of the Agency's interest in acquiring property described in § 24.102(b) also be personally served or sent by certified or registered first class mail. No change has been made.

Section 24.6 Administration of Jointly-funded Projects.

Two comments were received on this section, which is essentially unchanged from previous requirements, except for the addition of the statutory responsibility of the lead agency to designate a cognizant agency in the absence of agreement between Federal agencies. Neither comment addressed this change and no further change has been made.

Section 24.7 Federal Agency Waiver of Regulations

Two comments were received which were specifically related to this section. One noted approval of the provisions as written, the second asked for some examples of a proper justification, or some basis upon which to make a decision. This section has already been discussed in general in connection with comments on § 24.1. Because of the great variety of situations which may make seeking a waiver advisable, we do not believe it practical to provide examples. Examples have a tendency to be both limiting and, conversely, to serve as unreliable justifications or precedents for expansive interpretations.

The primary concern is that the waiver of a non-statutory requirement in the regulation does not reduce *any* assistance or protection provided to an owner or displaced person under this part. There is little doubt that requirements imposed by the Uniform Act may, necessarily, create some delay and administrative burden. Therefore, it would be inappropriate to grant a waiver based on the general proposition of delay and administrative burden. The Waiver proposal must be specific and it must protect the rights of owners and displaced persons and not be designed to serve some convenience of the requesting agency.

The proper implementation of this provision of the regulation requires the exercise of good judgement, with proper concern for displaced persons.

Section 24.8 Compliance with Other Laws and Regulations

Two comments were received on this section. One said the list of authorities should include a statute which was already included. The second comment suggested the inclusion of Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and this has been done.

This section was also revised to emphasize that there may be other laws and regulations to be complied within implementing this regulation and the list provided is not necessarily all inclusive.

Section 24.9 Recordkeeping and reports

Section 24.9(a) Records. Four comments were received on this section. One appreciated the provision for confidentiality of records. Another asked for the "established requirements" for "adequate records." The adequacy of an agency's records is determined by the ability of those records to demonstrate compliance with this regulation regarding the agency's acquisition and displacement activities. Two comments were concerned with the 3-year retention period for records. One suggested an extension to 5 years, the other suggested a period of 3 years after the project is completed. There is nothing to prevent an Agency from retaining records for a period longer than 3 years after final payment to a property owner or displaced person. FHWA has amended the regulation to require retention of records for 3 years or in accordance with applicable regulations of the federal funding agency.

Section 24.9(c) Reports. Special consideration and comment was requested on the format and timing of this report. Four comments were favorable to both the format and timing of the report. One comment agreed with the format, but claimed the information was needed on an annual basis. Two comments approved of the timing, but wanted the format changed. The final respondent wanted both the timing and the format altered. With the exception of one suggested format change, to lump all non-residential displacements together, the proposed changes are clearly related to the specific program requirements of the respondents. As such, it would be inappropriate to address these concerns with revisions to a report intended to serve, with as little burden as possible, as source material for periodic reports to the Congress on the principal activities conducted under the Uniform Act. The report format and timing remain unchanged.

Section 24.10 Appeals

Section 24.10(b) Actions which may be appealed. Several comments were received on this section. The principal concern was that the appeal process seemed to extend to the question of just compensation. There are well established procedures in place in every State, and in the Federal government, to handle disagreements involving just compensation. These procedures typically begin with the offer of just compensation and conclude, where necessary, with litigation.

What is appealable is found in the Uniform Act and the regulation where they refer to the aggrieved person's "application." This refers to the application for the benefits of the Uniform Act. The intent of the Act and the regulation is to require that there be a procedure for appeals concerning the benefits or eligibility conferred by the Uniform Act. This provides an administrative remedy for persons aggrieved by an agency determination as to his or her benefits or eligibility. Normally this procedure would have to be completed before such person could seek judicial review.

Section 24.10(c) Time limit for initiating appeal. Two commenters suggested extending the time limit for initiating an appeal. The responsibility for setting the time limit rests with the Agency subject only to the constraint that it not be less than 60 days after the person receives written notification of

the Agency's determination regarding the person's application or claim.

Section 24.10(h) Agency official to review appeal. Several comments were received about agency appeal processes, the levels of review, and the official conducting the review, whether from the agency or another appropriate hearing officer.

The appeal process is an entirely internal process of an agency. The decisions by the agency about the process must only conform to these regulations and whatever other administrative rules which the agency must follow. However, as stated in the rule, agencies must advise the person of his or her right to seek judicial review after the administrative hearing procedure is exhausted.

Having considered the comments, FHWA has elected to retain § 24.10 as written.

Subpart B—Real Property Acquisition

Section 24.101 Applicability of Acquisition Requirements

Section 24.101(a). There were a large number of comments on this section which addresses the applicability of Subpart B and Title III of the Uniform Act. Most of the comments expressed a concern with limited scope of application, and several requested that the voluntary transaction criteria found in Appendix A of the December 17, 1987 interim final rule be included.

FHWA has substantially revised this section based on the comments. Voluntary transaction criteria have been included, and a provision has been added exempting from coverage certain real property transactions between cooperatives and their members. The presence of Federal financial assistance is the basic determinant for applicability, with exceptions provided for those acquisitions listed in § 24.101(a)(1)–(4).

Eminent domain authority is not a determining factor by itself, although any acquisition made under the threat of eminent domain is clearly subject to Subpart B requirements because such an acquisition cannot be a voluntary transaction.

Essential to the voluntary transaction process is the requirement that the owner must be informed in writing that the property will not be acquired unless amicable agreement can be reached. However, even though an acquisition may be excluded as a voluntary transaction, agencies may choose to follow the Subpart B process.

Section 24.101 (b) and (c). Certain clarifications have been made in these sections. The change in § 24.101(c), federally-assisted projects, is applicability "to the *greatest* extent practicable under State law" (emphasis supplied), which is the same wording as that found in section 305(a) of the Uniform Act. FHWA interprets this to mean an agency must comply if compliance is legally possible under State law. This should be taken into account in an agency's assurances pursuant to § 24.4(a).

Utility companies as acquiring agencies.—When the Congress amended the Uniform Act, it changed the definition of "State agency" to include "any person who has the authority to acquire property by eminent domain under State law." Utility companies are the most common example of non-governmental entities which are granted eminent domain authority. The effect of this change was, for the first time, to bring utility companies under Uniform Act coverage for certain of their projects.

Sixteen comments were submitted by or on behalf of utility companies, representing the views and concerns of many hundreds of individual entities through their associations, cooperatives, and law firms. Almost all of these comments concern the possible impact of Subpart B of these regulations upon rural electric cooperatives that may receive Federal financial assistance from the Rural Electrification Administration (REA) in the Department of Agriculture (USDA).

This section of the preamble is devoted to the comments and concerns of those entities. FHWA believes that compliance with the Uniform Act and these regulations will not be as burdensome as some of the commenters perceive it to be. In addition, as discussed further below, one suggestion, exempting from coverage certain transactions between cooperatives and their members, has been adopted.

Following are the substantive issues raised in the comments, with an FHWA reply.

1. The rule should be amended so it would not apply to electric cooperatives.

Reply: FHWA does not have authority to exempt any entity or group of entities from compliance. However, as described in some detail later, the regulations intentionally provide much latitude and discretion in how a particular objective may be accomplished.

2. It would appear that all of our projects and acquisitions are covered by the regulation.

Reply: There are certain conditions that must be present before a utility company must comply with Subpart B requirements. Most importantly, there must be Federal financial assistance as defined at § 24.2(j). If Federal involvement is solely the guarantee of a loan from non-Federal sources, for example, the Uniform Act is not applicable.

If an individual acquisition qualifies as a voluntary transaction under § 24.101(a)(1), Subpart B requirements do not apply. This may be important for non-site specific acquisitions.

It was stated in a comment that a condition of membership in a cooperative may include an obligation to contribute power line rights-of-way. A provision has been added in § 24.101(a)(3) to provide that Subpart B requirements do not apply if the contribution of real property to a cooperative is made by a member to meet the requirements of membership agreements, contracts or bylaws. FHWA believes that such cases, where members of cooperatives have agreed to provide real property to the cooperative as necessary to advance the common interest of the members, are similar to voluntary transactions rather than to normal Federal or federally funded acquisition.

3. This regulation appears to replace the State eminent domain law under which we operate.

Reply: Both section 305 of the Uniform Act and § 24.101(c) of this part make it clear that the real property acquisition policies in Title III of the Act and Subpart B of this part are applicable "to the greatest extent practicable under State law". This means that while compliance is required if it is not prohibited by State law, these provisions do not supercede or overrule any State law requirements. Accordingly, utility companies must continue to comply with the requirements of State eminent domain law. Section 24.4(a) of this part addresses the assurances of compliance that must be submitted (generally a one-time action) to the Federal agency providing financial assistance. Section 24.101(c) addresses the matter of exceptions to Subpart B provisions because of provisions of State law.

A utility company may wish to contact the highway agency in its State for assistance in preparing its assurances in those situations where the same State eminent domain law applies to both the highway agency and the utility company. The State highway agency should know whether the assurances of compliance need to be qualified because of State law.

4. We understand §§ 24.102(c)(2) and 24.103(a) to require an appraisal report containing all of the information listed

in § 24.103(a) when the property value exceeds $2,500.

Reply: That is not the intent of these sections. Under the appraisal waiver provisions of § 24.102(c)(2), the utility company has the option of not making an appraisal if the value is estimated to be less than $2,500, and the valuation problem is simple and straight-forward. See the preamble discussion of that section for further information.

Under the appraisal standards in § 24.103(a), the utility company essentially determines its own appraisal documentation standards and policies, particularly with respect to acquisitions which do not require a detailed appraisal. The intent of this provision is to match the extent of the analysis and documentation to the complexity of the appraisal problem.

In difficult, complex valuation situations, § 24.103(a) requires preparation of a "detailed" appraisal, and specifies the minimum content of such appraisals. The minimum content specifications apply only to detailed appraisal reports. Several commenters missed this point.

Finally, there is no necessary connection between the $2,500 appraisal waiver ceiling, and the need to prepare a detailed appraisal report. The decision on when to secure a detailed appraisal lies primarily with the utility company, based on its assessment of the situation.

5. The regulation appears to require that we contract for the services of independent appraisers, even though we have well qualified appraisers on our staff.

Reply: This is incorrect. The use of staff or outside personnel for appraisal work is entirely at the discretion of the utility company. The only policy which addresses this issue is § 24.103(d), which essentially states the appraiser must be qualified to perform the work.

6. The regulation appears to require that we give the owner a copy of the appraisal, which will hinder negotiations.

Reply: The regulation does not require that the owner be given a copy of the appraisal. In some cases this is a matter of State law, but in the typical situation it is a negotiation policy decision at the discretion of the Agency.

In § 24.102(e), the owner is required to be given a written offer and summary statement which, in very brief terms, amounts to a description of what the offer is for. A utility company may wish to contact the State highway agency and obtain a copy of its summary statement form or format for use as a guide.

7. These regulations are not appropriate for use in acquiring substation sites. Generally there are many alternative locations available, and one of the owners will usually be happy to sell a satisfactory site.

Reply: It was this kind of situation FHWA contemplated when it developed the voluntary transaction policy and criteria found at § 24.101(a)(1). If an acquisition meets the criteria, Subpart B requirements do not apply.

8. Section 24.102(j) regarding a deposit with the court is in conflict with our State law on various points. State law specifies a different place for the deposit, and is likewise specific on how the amount of the deposit is to be determined.

Reply: The provision comes from section 301(4) of the Uniform Act, and, as noted above, is applicable to the greatest extent practicable under State law on federally assisted projects. If State law prescribes a different process there is no conflict because State eminent domain law prevails. See also § 24.4(a) regarding assurances.

9. Just compensation in our State is based on the before and after rule, rather than the take plus damage rule. If we were to appraise damages separately, as seems to be necessary under § 24.103(a)(5), the appraisal would not be admissable in court.

Reply: The language in section 301(3) of the Uniform Act recognizes the differences in State law on what constitutes just compensation. It was not FHWA intent to force a different appraisal process. This oversight has been corrected by the addition of "where appropriate" to § 24.103(a)(5).

10. The requirement for a review appraisal in § 24.104 should be deleted except for high value situations.

Reply: FHWA has not adopted this recommendation because of the importance we place on the appraisal review function.

The comment indicates there may be a misunderstanding. Section 24.104 does not require an appraisal by a reviewer (although the reviewer may choose to do so because of an inadequate appraisal report). Rather, this section is intended to require a review of the appraisal or appraisals on a property.

The review is an essential part of the process of establishing the amount of the offer of just compensation to be made to the owner. In simplistic terms, the reviewer checks for errors of fact, consistency of value from property to property, and general adequacy of the appraisal as a basis for the offer of just compensation.

Where there is only one appraisal, the reviewer is that critical second party involved in the process of setting the amount of the offer. The association with § 24.4(c) regarding prevention of fraud, waste, and mismanagement is readily apparent.

The reader is directed to the discussion under § 24.104 in Appendix A for further information. As stated there, in low value, uncomplicated situations a signature may suffice as the reviewer's statement.

The foregoing discussion of issues raised in the comments is intended to assist utility companies and others in the implementation of these regulations and to describe how the impact of these regulations on cooperatives will be limited. However, it is possible that there may be other questions that have not been answered. We encourage any further comments relating to the impact of this regulation on rural electric cooperatives. Any further comments on this subject will be considered and, if warranted the regulation will be amended and/or the discussion in the preamble will be supplemented.

Most, if not all, Federal financial assistance for utility companies comes through the REA of the USDA. FHWA intends to work closely with Departmental officials in effecting smooth implementation.

Section 24.102 Basic Acquisition Policies

Section 24.102(c)(2). This section addresses waiver of appraisals. One comment said agencies should have the latitude to decide not to obtain an appraisal where property may be donated without first obtaining a release from the owner.

The Agency has that discretion for the under $2,500 value category. A prior release is not necessary. However, the FHWA does not agree with extending that same policy to all donation situations. An owner may want an appraisal and an offer before making a decision to donate, and it is only fair to make the owner aware of this option.

On the matter of establishing the dollar threshold at $2,500, four stated it was too high, seven said it was too low, and ten stated $2,500 was acceptable. FHWA has decided to retain the proposed threshold.

A commenter raised the question of a review where no appraisal has been made. Other comments questioned how an Agency is going to know if an acquisition is worth less than $2,500 in the absence of an appraisal.

Section 24.102(c)(2) contemplates that an informed judgment will be made by a qualified person. While it is not a regulatory requirement, prudence suggests the value calculation be in writing, and be retained.

On the matter of a review: Under § 24.102(d), the Agency is required to make a written offer. Offer letters are generally signed by someone at the management level. It is general FHWA policy to have not less than two people involved in setting the amount of an offer of just compensation. This process would constitute a review where no appraisal is made. Precisely how such matters will be handled is within Agency discretion.

A few comments objected to waiving an appraisal for any reason. An Agency has no obligation to waive the appraisal of an acquisition if it prefers not to.

Section 24.103 Criteria for Appraisals

Section 24.103(a). One Agency described how it intended to integrate the appraisal waiver provision in § 24.102(c)(2) with this section on appraisal standards. Many other variations are also possible, but the comment is summarized here for purposes of illustration. In brief, negotiators will be instructed to clearly explain to the owner the right to have an appraisal made and in no way pressure the owner to sign a waiver; acquisitions valued between $500 and $2,500 are to be supported by sales in the project area, and will be approved by a review appraiser prior to negotiations. As described, this Agency intends to do more than the minimum: An appraisal would always be a property owner option; some value documentation will be a requirement; and a reviewer's approval is necessary in certain circumstances. This description is intended to illustrate the latitude an agency has in implementing the provisions of this Subpart.

Section 24.103(a)(2). One comment recommended the requirement for a 5-year sales history be cut back to two or three years. This recommendation was not adopted, primarily because it applies only when a detailed appraisal is necessary. When a detailed appraisal is not necessary, the agency may set a different standard.

Section 24.103(a)(3). A comment recommended that a statement be added to the effect that the appraiser must explain the absence of more recent sales data when the sales used are over 6 months old. This is viewed as a good business practice on the part of the appraiser, but not as an essential regulatory requirement.

Section 24.103(e). Three comments recommended an increase in the dollar threshold from $2,500 to $5,000 where the same person can both appraise and negotiate. The FHWA has not adopted this recommendation because support for the increase is not widespread.

Section 24.104 Review of appraisals

Section 24.104(b). In response to a comment, a minor editorial clarification has been made to this section regarding the role of the reviewing appraiser in establishment of the Agency's offer of just compensation.

Section 24.105 Acquisition of Tenant-owned Improvements

Four comments expressed a concern with the matter of adequately protecting the rights of a tenant owner of improvements. One of these comments recommended specific reference to tenant owners be made at many points within Subpart B.

FHWA has made no change because it believes tenant owner interests are adequately protected. The language of Subpart B is based on the premise that if a tenant can demonstrate an ownership interest in real property, that person is an owner of real property to be acquired for purposes of this regulation, and is to be treated as such.

Section 24.105(c). Five comments stated that contributory value or salvage value measures of compensation to a tenant-owner are not fair and equitable when the appraiser finds that all of the value is in the land, with no value attributable to the improvement. As a consequence, they recommended a "value in place" measure of compensation be added to this section.

FHWA appreciates the difficulty this circumstance presents, but the provisions of Section 302 of the Uniform Act do not permit it to accommodate the recommendation. Section 302 specifies contributory value, or value for removal (which has been implemented as salvage value) as the measures of compensation.

However, there is some latitude available under § 24.105(e). Payment under "other applicable law" could include provisions of State law and/or relocation assistance benefits. Also, contributory value can be viewed on a temporary basis in the valuation estimate process. FHWA believes the basic objective is payment of an amount of compensation which is just, reasonable, and fair.

Two comments were received from representatives of the outdoor advertising industry. Both comments focused on the way advertising signs are treated by §§ 24.2(q), 24.105, and 24.303(e) of the regulation. They suggested that, pursuant to section 302 of the Uniform Act, all advertising signs covered by the Uniform Act should be acquired as tenant owned improvements, and that the value of a sign in place before removal should be used in determining the owner's compensation. Neither of these suggestions have been adopted.

Specific language concerning advertising signs in section 101(7)(D) of the Uniform Act makes it clear that some, if not all, signowners should be entitled to moving and related expenses under section 202 of the Uniform Act, rather than to compensation for a sign's acquisition under section 302. Furthermore, that language in section 101(7)(D) was amended in the 1987 Amendments to broaden the benefits available to signowners under section 202. For many years, FHWA has reconciled the specific language in section 101(7)(D) of the Uniform Act and the more general language concerning tenant improvements in section 302 of the Act by providing that an advertising sign considered to be personal property under State law should receive the relocation benefits provided by section 202, and if considered to be real property, it should be acquired in accordance with section 302. FHWA believes this is the most reasonable interpretation of the provisions of the Uniform Act, and it continues to be reflected in this final rule.

When a sign is acquired under section 302, subsection 302(b)(1) provides that its owner should receive the greater of its contributory value to the real property or its "fair market value * * * for removal from the real property."

FHWA interprets this phrase to mean that removal of the sign must be taken into consideration in determining "fair market value for removal," and believes this is done in §§ 24.105 and 24.2(q) of the regulation.

Subpart C—General Relocation Requirements

Section 24.203 Relocation Notices

Section 24.203(a). A comment was received that the term "as soon as feasible" was not sufficiently specific. FHWA considers this term to mean "as soon as practical" and does not believe that any further elaboration is necessary. This comment and several other similar comments addressed to this section may have merit in individual situations, but do not necessitate changes in the regulations. Displacing agencies may wish to clarify particular matters that are of concern to them in their operating instructions.

Section 24.203(b). In response to one comment, a definition of "Notice of intent to acquire or notice of relocation eligibility" has been added at § 24.2(o).

Section 24.205 Relocation Planning, Advisory Services, and Coordination

Section 24.205(a) Relocation planning. There were 13 comments concerning relocation planning. Most were in favor of the planning concept, but were concerned about how relocation plans could hinder project development. The relocation planning required by this section should be a tool to assist in the orderly development of a project and should be considered in this light by both the displacing agency and the funding agency. FHWA believes that most displacing agencies are well aware of the program or project benefits which can be derived through early and sound relocation planning and many agencies currently use comprehensive planning techniques in project development. We do not view relocation planning as a complicated, time consuming activity. We see relocation planning as a process which provides meaningful information to program and project decision makers. It does not need to result in a detailed document containing unnecessary data and needless problem solving. Instead, it should be a process which is scoped to the complexity and nature of anticipated program or project relocation activity and should not require a burdensome commitment of Agency resources. Language emphasizing this has been added to this section. In response to several comments, there is no requirement that planning documents be submitted for approval to the funding agency at any stage of a project or program. Planning is the responsibility of the displacing agency.

Section 24.205(c) Relocation assistance advisory services. Several comments were received concerning relocation assistance advisory services. Three comments objected to the requirement to provide transportation to inspect housing in § 24.205(c)(2)(ii)(D). This provision is not new and has been a part of the common rule for implementation of the Uniform Act since that rule was first promulgated by DOT on March 5, 1985 (50 FR 8955 (1985)). It is the obligation of the displacing agency to assure that both owners and tenants are able to inspect the housing to which they are referred. There is no evidence to suggest that this service has been abused by displaced persons.

Section 24.205(c)(2)(iii). At the suggestion of one commenter, the words "comparable and" have been removed from this section. The emphasis is on the identification of suitable property locations for business and farm operations.

Section 24.205(c)(2)(vi). The provision of advisory services to a person who initially occupies property after it is acquired by the agency is required by the statute. Therefore, it cannot be deleted as recommended by several commenters. These persons are not displaced persons, but are eligible for advisory services.

Section 24.206 Eviction for Cause

In response to comments, this provision has been modified in several respects. HUD, in its program regulations dealing with displacements caused by other than State-agency acquisition, has long recognized eviction for cause as a basis for denying eligibility for relocation benefits. Now that the Uniform Act and these implementing regulations apply to this broader array of displacement activities, it is necessary that valid evictions continue to be recognized as a factor that can extinguish potential rights to relocation payments.

At the same time, it is important that otherwise entitled persons not be denied relocation payments by an eviction undertaken for the purpose of evading an obligation to make relocation assistance available, or for minor violations of a lease.

Accordingly, this final rule retains the major thrust of the eviction for cause section, which has been a part of the governmentwide common rule since 1986, that persons lawfully occupying property at the time of the initiation of negotiations will continue to have a presumptive entitlement to relocation payments.

However, modifications have been included to clarify that payments may be denied in certain circumstances. Thus, a person who is evicted for cause prior to the initiation of negotiations may be denied payment even if that person vacates the premises after the initiation of negotiations. In addition, persons who seriously or repeatedly violate material terms of the lease or occupancy agreement may be evicted even if the eviction proceeding is begun after the initiation of negotiations.

In either case, the Agency must assure itself that the eviction action is not undertaken to evade the protections of the Uniform Act. Such eviction for cause circumstances should arise only infrequently and Federal funding agencies will be expected to ensure that this provision is not misused.

Section 24.207 General Requirements—Claims for Relocation Payments

Section 24.207 (f) Deductions from relocation payments. This section has remained the same as was published as part of the common rule in the March 5, 1985 **Federal Register**. Section 24.207 continues to allow agencies to deduct a person's unpaid rent owed to the Agency from the person's relocation payment in cases where it will not prevent the person from obtaining a comparable replacement dwelling. Since the relocation payment is not to be considered income (§ 24.208) and is provided for the particular purpose of obtaining replacement housing for the displaced person, it cannot be released to other creditors without assurances that comparable decent, safe, and sanitary housing will be available to the displaced person.

Subpart D—Payments for Moving and Related Expenses

In addition to comments on proposed rule changes, a number of comments received on this subpart were requests for clarification. Ordinarily, such clarification would be provided by technical advisory guidance. However, to be responsive to the comments, we have summarized the answers to some of these below.

Section 24.306 in the NPRM has been renumbered as § 24.304 and § 24.304 has been renumbered as § 24.306 to provide a better grouping of topics. The numbers used below are those used in this final rule.

Section 24.301 Payment for Actual Reasonable Moving and Related Expenses—Residential Moves

Questions were received about payment for the storage of personal property covered in § 24.301(d). As with all other moving expenses, the Agency determines what storage costs are reasonable and necessary for a move to take place. If the Agency determines storage to be necessary, the costs of moving the personal property to and from storage would also be eligible for payment. Boarding of animals is not considered to be storage.

Section 24.302 Fixed Payment for Moving Expenses— Residential Moves

There were numerous comments concerning the $50 fixed payment for moving expenses provided in § 24.302. FHWA has clarified the language of this exception to apply only to persons with minimal personal possessions who are in occupancy of a dormitory-style room shared by two or more unrelated persons, or a person whose residential move is performed by an agency at no expense to the person. This language is also reflected in the moving expense schedule which is published by FHWA elsewhere in this Part II of today's **Federal Register**.

Section 24.303 Payment for Actual Reasonable Moving and Related Expenses—Nonresidential Moves

Sections 24.303(a)(3) and 24.304(a)(4). Four comments asked for clarification of the difference in treatment of utilities in these two sections. The expenses for providing utilities under § 24.303(a)(3) are those costs incurred to attach relocated personal property to utility service already provided on-site, such as electrical boxes, gas meters, and water meters. Modifications to the equipment or to the on-site utility service may also be eligible, if necessary. These costs must be necessary to reinstall personal property that has been moved from a displacement site or newly installed at such site and would generally only benefit the relocated business operation. Section 24.304(a)(4) provides for making electrical and other services available to the replacement site. These costs may be necessary to make the real property suitable for the business operation and could generally enhance the value of the real property. Costs under § 24.304(a)(4) are limited by statute to $10,000 for all reestablishment expenses. Costs under § 24.303(a)(3) are limited to what is necessary, without dollar limitation.

Section 24.303(a)(9). There were several comments about relettering of signs and replacing stationery made obsolete as a result of a move. This section covers those business items typically used by a business for the purpose of advising its customers and the public of the location of the business. If a displacing agency considers other items appropriate for this category, it may use the waiver procedures in § 24.7 on a case-by-case basis.

Section 24.303(a)(10). One commenter suggested that an acquiring agency could become responsible under the requirements of this section for abandoned personal property that could be considered hazardous material. This is not a Uniform Act issue, but an issue typically governed by Federal or State laws governing the proper disposal of hazardous material.

Section 24.303(a)(13). Two comments stated that the $1,000 limit on the cost of searching for a replacement location was not adequate for some business and farm operations. The displacing agency may use the waiver procedures in § 24.7 on a case-by-case basis if a displaced business or farm operation has unique requirements or circumstances.

Section 24.303(c). Questions were received about self-moves of business or farm operations. This section does not preclude actual cost self-moves supported by records and receipts of the costs incurred. The Agency may use moving costs findings prepared by qualified staff, estimates obtained by the Agency, or if acceptable to the Agency, estimates obtained by the business or farm operator. A single moving cost finding for a low cost or uncomplicated move prepared by qualified staff is a "single bid or estimate" for purposes of this section.

Section 24.304 Reestablishment Expenses—Nonresidential Moves

Twenty eight commenters provided comments on this section. While generally in agreement with the list of eligible expenses in § 24.304(a), the majority thought that the dollar limits should be removed from the three categories where limits are imposed. We have elected to retain the dollar limits which serve as cost controls for expenses which we believe to be most vulnerable to abuse. Since it is the Agency's prerogative to determine which reestablishment expenses are reasonable and necessary and since § 24.304(a)(13) allows the Agency to request a waiver from the Federal funding agency within the $10,000 statutory maximum, there is sufficient flexibility provided to the Agency. On the other hand, the stated limits of $5,000 for increased operating costs and $1,500 for exterior signing are considered to be reasonable in most cases, and may assist a business owner in making appropriate decisions about a new business site and the size and type of signing for the new business site. The inclusion of increased costs of operations as an eligible expense in § 24.304(a)(10) was also commented upon. The Uniform Act's legislative history supports the inclusion of these expenses. Since the costs of operation are legitimate reportable business expenses, the income tax records of most businesses should be adequate to provide a record of such costs prior to displacement. The costs at the new location can be established or estimated using such sources as the new leases, utility company projections for utility charges and taxing authority records for tax increases.

Section 24.304(b)(6). This section has been deleted. The 1987 Amendments exclude "a person whose sole business at the displacement dwelling in the rental of such property to others . . ." from qualifying for an "in lieu" payment (see § 24.306(a)(4)). This exclusion, however, does not extend to reestablishment expenses.

Section 24.306 Fixed Payment for Moving Expenses—Nonresidential Moves

Comments were received from 20 sources on this section. Recommendations were made to pay the fixed payment as an option to a business with no criteria or, conversely, to pay the fixed payment only if the business was discontinued. The additional criteria added in the NPRM were also commented upon. Several wanted to add additional criteria. One commenter wanted different criteria for farm operations than for businesses. A number of comments were received that would make the owners of residential property ineligible for this payment. Others thought that the owners of leased commercial property should also be ineligible.

FHWA has not changed this section. The fixed payment is an alternative to the payments for moving and reestablishing a business, farm, or nonprofit organization. The new criteria are added to either clarify eligibility, correct inequities, or implement new statutory exclusions as explained in the preamble of the NPRM. The displacing agency retains the flexibility to determine the basic eligibility based on the substantial loss of existing patronage criteria and gains criteria that can readily be explained to displaced persons.

There is no requirement now, nor has there ever been such a requirement, that a displaced business must be discontinued to receive this payment. Similarly, this payment has been and continues to be available to otherwise eligible businesses that do discontinue operations. There is also no requirement that a business be without a source of income as suggested by three commenters.

Establishing separate income and payment criteria for farm operations would not be appropriate at this time.

There were several comments concerning the perceived inequity of the ineligibility of owners of rental residential property for a fixed payment while owners of other rental property remained eligible. FHWA has corrected this inequity by, generally, excluding owners of rental property from eligibility for non-residential fixed payment.

Section 24.306(d) Nonprofit organization. There were a variety of comments concerning the minimal fixed payment of $2,500 in lieu of actual moving expenses. Most of them favored increasing the payment available to nonprofit organizations. In response, FHWA has revised the payment to

nonprofit organizations to range from $1,000 to $20,000 based on criteria similar to businesses, i.e. the average annual revenue for 2 years minus operating expenses. This procedure will be more equitable for nonprofit organizations.

Section 24.306(e) Average annual net earnings of a business or farm operation. Several comments were received about the computation of average annual net earnings when business or farm operations suffer a net loss for any year. There are several ways to compute net losses. Some agencies have used "0" if the net earnings result in a net loss. Other agencies use the actual net loss figure. Either method is acceptable if used uniformly by a funding agency.

Section 24.307 Discretionary Utility Relocation Payments

A few respondents urged that the reimbursement of extraordinary expenses be made mandatory, while several others indicated the discretion given the displacing agency should be retained. The discretionary language, "the displacing agency may, at its option," has been retained because the 1987 Amendments and the Conference Report accompanying them are quite clear that this payment is intended to be at the discretion, or option, of the displacing agency. It would not be appropriate to make mandatory by regulation that which was left clearly permissive by statute.

Section 24.307(a)(5). A number of respondents objected to the language in the NPRM which requires that State or local reimbursement be "permitted by State statute." The principal thrust of the objections was that this language meant that unless there was a specific State statute permitting the payment, no payment could be considered. FHWA agrees that the proposed language could be subject to misinterpretation and have revised the subsection, to provide that reimbursement must be "in accordance with State law." This conforms to the clear intent of Congress, as expressed in the Conference Report that accompanied the 1987 Amendments.

Section 24.307(b) Extraordinary expenses. Six comments expressed concern with this section's definition of "extraordinary expenses." Three of the comments recommended changes which would permit certain expenses, even though ordinarily budgeted, to be considered as "not routine or predictable expenses" and, therefore, qualify as "extraordinary expenses." FHWA has not adopted these recommendations. It is the expressed intent of Congress, as found in the Conference Report, that "utilities would continue to pay those ordinary relocation costs within their reasonable contemplation as occupants of local rights-of-way * * *" FHWA believes the language of this section will allow a utility company to present its case for those expenses which it considers to be "not routine or predictable" and not ordinarily budgeted as operating expenses.

Four comments urged removal of the provision which would exclude from extraordinary expenses those expenses which the utility company has explicitly and knowingly agreed to bear as a condition for use of the right-of-way. Again the language of the rule represents the clear intent of Congress as expressed in the Conference Report accompanying the 1987 Amendments.

While we are cognizant of the concerns presented by the public utility industry, we believe this rule clearly expresses the intent of Congress, and, as a consequence, § 24.307(b) is unchanged.

Subpart E—Replacement housing payments

Section 24.401 Replacement Housing Payment for 180-Day Homeowner-Occupants

Section 24.401(a)(2). Several comments were received about the extension of eligibility for a replacement housing payment beyond one year for good cause. In response, the meaning of "for good cause" has been amplified in the appendix.

Section 24.401(a)(2)(i). Comments were received about the appropriate "start" date for the one-year eligibility for a replacement housing payment in the case of condemnation. In response FHWA has clarified that the one-year period starts when the full amount of estimated just compensation is deposited in the court. This may be the Agency's proffered amount or a commissioners' award, if appropriate. In either case, the Agency does not need to delay the one-year start date until final adjudication.

Section 24.401(a)(2)(ii). This section has been changed to conform with the amendments of section 203(a)(2) of the Uniform Act made by section 406(5) of the 1987 Amendments. Several comments were received about the differences between the criteria for eligibility for 180 day owner-occupants and 90 day owner-occupants and tenants. The change in criteria for 180 day owner-occupants is statutory. There is no requirement that changes be made in criteria for 90 day owner-occupants and tenants. The "date the displaced person moves" is a simpler criterion to use than the "date the displacing agency's obligation under § 24.204 is met" and has been retained where feasible.

Section 24.401(d). Thirty-one comments were received concerning the method for computing increased mortgage interest payments. The commenters were about evenly split between preference for the buydown method as presented in the body of the NPRM, and the buydown method presented in the preamble. A few wanted the option of using the former annuity or amortization method if it should prove less expensive for the Agency.

The discussions in favor of the simplified buydown method presented in the preamble emphasized the cost-savings and time-savings to the Agency, and the ability of a displaced person to plan his or her replacement housing purchase knowing the full amount of payments to which such person is entitled. The view of these commenters was that this would not create a windfall because the displaced person still had to acquire a decent, safe, and sanitary replacement dwelling to be eligible; only the financing terms were his or her choice. Several comments were also made that the displaced person could readily understand the concept that an interest rate at less than current market interest rates was an asset and the computed payment was related to this fact.

On the other hand, those comments that favored the language in the body of the NPRM were concerned that a windfall would be created if a person paid cash for the replacement dwelling or assumed an existing mortgage at a lower interest rate than the computed rate. There was also a question of the legality for the preamble alternate, and concern that making the payment available on terms other than those actually used in the purchase of a replacement dwelling would not satisfy the statutory language.

FHWA has elected to retain the procedure in the body of the NPRM. This procedure requires that an estimate of the amount of the payment be provided to the person. Such estimate shall be based on the current prevailing rate for fixed-rate mortgages and subsequent payment based on the actual mortgage terms obtained. This process will require advisory services to the displaced person to enable such person to be prudent in the financing of his or her replacement dwelling.

In response to comments received, FHWA has revised § 24.401(d)(2), by adopting the language in § ____.401(d)(3)

of the common governmentwide rule, to provide that the payment shall be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is less.

Many of the same commenters who preferred this method did not think that their agency could make the increased mortgage interest payments at the time of closing because of their payment procedures or the loan processing procedures of lending institutions. In response, the final rule has been revised to provide that the payments must be made "at or near" the time of closing. However, the implied purpose of the increased mortgage interest costs payment is to reduce the replacement mortgage; therefore this payment must be available to lower the amount of the mortgage in a timely manner, preferably at the time of the closing on the replacement property. This procedure does require close coordination with the closing agent, but is more cost-effective than the amortization method. The agencies who thought they would be most successful using the buy-down procedure were those who used escrow accounts to make funds available to displaced persons.

There were also several comments about home equity loans and the inclusion of these mortgages in the computation of the increased mortgage interest costs payment. Home equity loans are valid mortgage liens on residential real property regardless of how the proceeds from the loans are used. Therefore, they must be included in the computation.

In answer to another comment, the mortgage rate to be used to compute the increased mortgage interest costs payment when the property is secured with an adjustable rate mortgage is the interest rate that is current on the property as of the date of acquisition.

A sample computation of an increased mortgage interest costs payment is included in Appendix A, as requested by a number of commenters. An IBM PC compatible computer program and financial calculator instructions will be made available as technical guidance as soon as feasible.

Section 24.402 Replacement Housing Payment for 90-Day Occupants

Section 24.402(a)(2)(ii)(A). The change made in § 24.401(a)(2)(i), concerning the deposit of estimated just compensation, is made here also.

Section 24.402(b) Rental assistance payment. There were numerous comments about the changes made in this section.

The first issue was the inclusion of the cost of utilities in the computation of the rental assistance payment. The inclusion of utilities has been an ongoing issue since the Publication of the common rule in 1985. Since that time, utility services have been included in the computation of a rental assistance payment if they were included at the displacement dwelling and/or the comparable dwelling as a part of the rent. FHWA recognizes the concerns of the current 14 commenters about the increased administrative burden for securing information and the variables in utility usage due to differing user lifestyles. These concerns can be addressed in various ways. One commenter suggested that a schedule be devised for utility costs with the input of utility companies in the project area that will reflect actual, reasonable costs. Another agency suggested that if true comparables are used for payment determination, the utility costs should also be comparable and their inclusion should not increase the cost of replacement housing. Relocation from a substandard dwelling to a standard dwelling could, in fact, decrease the cost of utilities, especially the cost of heat unless a larger dwelling is used to meet the needs of a family, or if all utilities were not available in the displacement dwelling, as noted by another commenter.

Agencies may establish their own procedures to be used for determining the cost of utilities if the procedures are used uniformly.

FHWA is continuing to include utilities in the monthly base housing computation because utilities are considered to be an integral part of monthly housing costs and historically have been treated as such by several Federal programs including those administered by HUD as a standard practice. The existence of adequate utilities is a primary requirement for a dwelling to be decent, safe, and sanitary.

The 30 percent figure used in § 24.402(b)(2)(ii) to determine base monthly rental is considered a reasonable percentage of income to be applied to rental housing costs under current market and economic conditions, and is consistent with the percentage of income figures currently being used in other subsidized housing and related programs of HUD and other agencies. Several commenters stated that, in their experience, many tenants are now paying 40 percent or more of their incomes for housing costs. Our concern is that the 40 percent payments primarily reflect the lack of affordable rental housing in the current market. We do agree that some tenants voluntarily elect to spend more than 30 percent of their income for housing when more affordable housing is available. However, FHWA believes these lifestyle choices for convenience, prestige or other reasons to be the exceptions, not the rule. Consideration must also be given to the fact that private lending institution requirements set the limit on the monthly cost of housing after purchase of a dwelling at approximately the same level as the 30 percent of income criteria established for tenants.

The inclusion of a person's income in computing a base monthly rent figure was also opposed by several commenters. The biggest concern was a perceived difficulty in the verification of income and an implied reluctance to accept income information from some displaced persons. FHWA believes that accurate information concerning income can be obtained from most persons. If there is obvious evidence that a person has more income than reported, it is the Agency's prerogative to accept the income as reported, to request additional verification of income, including income tax returns, or to inform the person that there is reasonable doubt that the information is accurate. If the income information is not provided or amplified as requested, the Agency may take such action as it deems necessary to obtain income information under a uniform agency-wide or area-wide policy.

Section 24.402(b)(3) Manner of disbursement. Eleven comments were received concerning the vesting of the full amount of the rental assistance payment when the displaced tenant receives the first rental assistance payment, either in lump sum or as an installment. Most of the comments took exception to the idea of vesting.

The vesting of the full amount of the rental assistance payment is intended to establish at a definite point in time, the full amount of the payment for the 42 month period after displacement. Vesting eliminates the red-tape requirements of recordkeeping, re-inspection, and recertification of the replacement dwellings, and continued contacts with the displaced person and the person's landlord that would otherwise be necessary. It also eliminates the potential problem of additional project costs as rents are increased or new DSS dwellings need to be found for those who no longer live in standard housing. FHWA understands that the same commenters are concerned about the diversion of lump sum rental assistance payments for non-housing uses, and a subsequent return of

the displaced person to sub-standard housing. One way to effectively provide installment payments, either to the displaced person or to the person and the person's landlord, without continuing agency supervision, is to place the payment in an escrow account that will be disbursed according to a pre-determined schedule. This method could also serve for disbursement of housing of last resort payments, which are also vested. The method of disbursement remains the Agency's discretion.

It should be understood that, under vesting, the only times a rental assistance payment should change are during the one-year period described in § 24.402(a)(2), and then only if tenant elects to up-grade his or her housing to receive the full amount of the original computed rental assistance payment based on a comparable dwelling, or changes his or her status from tenant to owner and therefore becomes eligible for an additional payment (see § 24.403(e)).

Section 24.402(c) Downpayment assistance payment. Twenty-one comments were received concerning downpayment assistance. Only 4 of the 21 commenters believed that the amount available for downpayment assistance should be limited to the computed amount of the rental assistance payment for tenants. The majority stated that agencies should make downpayment assistance payments of up to $5,250, with most recommending that the payment be restricted to the amount necessary to obtain conventional loan financing for purchase of a replacement dwelling. The main concern expressed was that allowing each agency to select a procedure for computing the down payment assistance payment did not promote uniformity.

Since the legislation does not give the lead agency the authority to select a particular procedure, but reserves such authority to the displacing agencies, we have elected to retain the existing language. As several commenters suggested, displacing agencies may want to coordinate with other agencies within the State or jurisdiction where they are located to reach a consensus on the procedure to be followed in that State or jurisdiction. FHWA will appreciate being advised of the experience of the various agencies in the implementation of this procedure. If the experience indicates that a change is needed to affect a more uniform implementation, we will seek a legislative change.

Regardless of the procedure selected, a rental assistance payment will have to be initially computed for tenants. If the computed rental assistance payment is zero, then the downpayment assistance is zero unless the agency has elected to make downpayment assistance payments of up to $5,250. If their eligibility is greater than $5,250 for rental assistance, they will be eligible for housing of last resort for rental assistance or downpayment assistance. As is required by statute, eligibility for owners of more than 90 days but less than 180 days for downpayment assistance will be limited to the amount that would have been computed had they been 180 day owners.

Section 24.403 Additional Rules Governing Replacement Housing Payments

Several comments were received concerning the requirement in § 24.403(a)(1) that an adjustment be made to the asking price of any dwelling used to compute the replacement housing payment to the extent justified by local market data. This procedure has been a part of the governmentwide common rule since it was first published in March 1985. It requires that adjustments be made in the asking price of comparable dwellings to the extent that the market demonstrates that expected sale prices will be less than the asking prices. A clarification of the use of this procedure has been added to Appendix A.

In § 24.403(a)(2), for clarity and as suggested by several commenters, FHWA has separated the procedures for major exterior attributes and buildable residential lots into two paragraphs.

Section 24.403(c)(6). Several comments were received concerning the use of current fair market value for the acquisition price of a previously owned dwelling when it is used as the replacement dwelling. The current fair market value is used because (1) it is the amount that would have been paid if the dwelling were purchased on the current market as a replacement residence, (2) the displaced owner could have acquired any other dwelling as a replacement and (3) the use of the previously owned dwelling is the conversion of an existing asset to replacement housing purposes. This regulation operates the same whether the previously-owned dwelling is mortgaged or unencumbered. In response to one commenter, the cost of an appraisal of the previously owned dwelling is a reimbursable cost if the agency considers an appraisal to be appropriate and necessary.

Section 24.404 Replacement Housing of Last Resort

There were 13 comments on replacement housing of last resort. Several concerned the requirement that the use of housing of last resort be justified. Such justification is considered important for good program management and is consistent with the requirement, added by the 1987 Amendments, that any payment provided for housing of last resort that exceeds the maximum amounts provided to tenants and owners by §§ 24.401 and 24.402 must be justified. A slight modification was made to § 24.404(a)(2)(i) at the recommendation of one commenter to clarify that justification for last resort housing assistance may be for an entire project or program area, if appropriate, without additional case-by-case justification. A number of comments were received about the change in status of a displaced person from a tenant to an owner. FHWA has clarified that such a change in status must be with the concurrence of the displaced person. The concurrence of the displaced person should be received prior to the execution of any of the methods of providing for housing of last resort. Several general comments were received about the concept of replacement housing of last resort. Replacement housing of last resort is a legislatively authorized continuation of the replacement housing assistance provided by §§ 24.401 and 24.402 of this part, and provides for comparable replacement housing for displaced persons not adequately provided for under those sections, or who do not meet the eligibility requirements of those sections. Additional flexibility is provided to displacing agencies for the provision of housing of last resort so that housing needs are met for owners and tenants in the most cost-effective, yet equitable way.

Subpart F—Mobile Homes

Section 24.502 Moving and Related Expenses—Mobile Homes

Only one comment was received on this subpart. In response, § 24.502(a) has been modified to state more clearly that, even though an owner-occupant whose mobile home is not acquired may receive replacement housing under § 24.503(a)(3), and therefore is not eligible for payment for moving the mobile home, he may be eligible for payment for moving personal property from the mobile home. Also, the commenter thought that all mobile homes should be treated as real

property. This may be appropriate in areas where mobile homes are treated as real property under State law or where an agency has the option to consider mobile homes to be either real property or personal property. However, some State laws consider mobile homes to be personal property only, and, therefore, they may not be acquired as realty.

Subpart G—Certification

This subpart implements one of the most significant changes added by the 1987 Amendments. As such, FHWA has a special interest in its implementation and would appreciate receiving further information on its use and effectiveness.

Several respondents commented on Subpart G, however no single comment, or group of comments, was sufficiently persuasive to necessitate a change in the proposed text. However, one comment on § 24.603, Monitoring and corrective action, did draw our attention to the need for a substantive revision of § 24.603(b).

Section 24.602 Certification Application

Two commenters recommended that certification applications be made directly from the head of the State agency to the Federal agency providing financial assistance, rather than through the State governor, or the governor's designee. FHWA does not adopt this recommendation. There is a definite need for a focal point within each State for the receipt and screening of certification applications. Consistent with the principles of federalism, the Office of the Governor, as the Chief Executive Officer in any State, is the logical starting point for this process since the governor normally exercises executive authority over the State agencies that are recipients of Federal financial assistance or through which Federal financial assistance is channelled to sub-recipients at the local level, all of whom are subject to the Uniform Act and any of whom could make application for certification approval. The certification process does not alter the existing relationship between local sub-recipients and the State-level recipients of Federal financial assistance. It is expected that any certification application made by a sub-recipient will be made through the State-level agency to the governor, or the governor's designee. In those instances where the local level agency (city, county, etc.) is the direct recipient, and there is no State-level agency authorized to perform such functions, the certification application would be made directly to the governor, or the governor's designee.

The governor, or a State office or agency designated by the governor, will be able to standardize the process and develop an expertise in the processing of applications. Further, the governor or his or her designee will be more able to assess the capabilities of those State agencies seeking to assume Federal agency responsibilities through the certification process. A focal point of this nature will be particularly advantageous in processing certifications from a State agency seeking certification approval from more than one Federal agency.

Two commenters indicated some misunderstanding of the responsibilities of the Federal funding agency.

It is not intended that the Federal funding agency endorse an approved application received from the governor, or the governor's designee, if the Federal funding agency has appropriate indications revealing program deficiencies regarding the certifying State agency. The purpose of having the Federal funding agency accept the approved application without performing an independent review is threefold: first, it emphasizes the role of the governor, or the governor's designee, in evaluating the State agency certifications; second, it will bring into focus the current status of the Federal funding agency's oversight of its State agencies; third, unless there are pre-existing appropriate indications of deficiencies, the certification approval can be handled more expeditiously. The second of the three foregoing points is the basis for the written assessment of the State agency's capabilities to operate under certification which the Federal funding agency must provide when the certification application is transmitted to the Federal lead agency.

Section 24.603 Monitoring and Corrective action

One respondent objected to the permissive withholding of Federal financial assistance if a certified State agency failed to comply with applicable State law and regulation serving as the basis of its certification. The respondent perceived this to mean that the authority to withhold approval of Federal financial assistance is available to any Federal agency regardless of the source of the financial assistance. This, of course, is not the case. The authority and the responsibility regarding the withholding of Federal financial assistance rests with each Federal agency regarding its projects, programs, and activities. The respondent's comment did, however, lead us to the recognition of a possible inconsistency between the requirements of § 24.603(b) and the assurances required by § 24.4 and sections 210 and 305 of the Uniform Act. As a consequence, § 24.603(b) is revised and clarified to provide that if a State agency certifies, under State law and regulation, it can and will comply with the provisions of the Uniform Act which would otherwise be covered by the sections 210 and 305 assurances and, then, fails to comply, the Federal agency should withhold Federal financial assistance in that State agency's programs, projects, and activities affected by the Uniform Act.

The certification process does not diminish the State agency's fundamental responsibilities regarding compliance with the Uniform Act, particularly those provisions referred in the sections 210 and 305 assurances. It is clear, from the statute, that compliance with provisions which are the subject of the assurances is of paramount importance to the continued Federal financial assistance of programs, projects, and activities affected by the Uniform Act.

For example, if Uniform Act non-compliance occurred in connection with a federally assisted project the Federal agency should exercise its authority to withhold Federal financial assistance until the state agency is again performing in compliance with the certification.

In order to ensure coordination of information among Federal agencies that may have accepted a certification from the same state agency, language has been added to § 24.603 (b) and (c) to require that the lead agency be consulted by the Federal funding agency before any Federal funds are withheld from a certified state agency or the acceptance of a certification is revoked.

Appendix A to Part 24—Additional Information

The appendix has been modified and augmented to provide for better understanding of the sections of the regulations to which it pertains.

Section 24.2(g)(2)

Persons not displaced. "Permanently" has been added to the first sentence to clarify that some persons may be temporarily displaced but are not displaced persons because they have not been permanently displaced.

Section 24.102(m)

Fair rental. In response to several comments concerning short-term rent, the modifier, "generally," has been added to the last sentence.

Section 24.306

Fixed payment for moving expenses—non-residential moves. FHWA has added

clarifying language in Appendix A for non-profit organizations treated under this section.

Section 24.401

Replacement housing payment for 180-day homeowner-occupants.

Section 24.401(a)(2)

A statement has been added to clarify the phrase "for good cause."

Section 24.401(d)

The computation of a "buydown" payment, the factors used in computation, and the agency's obligation to the displaced person are explained. Even though one commenter suggested that adjustment of the buydown payment, when a displaced person elects to mortgage the replacement dwelling for less than the remaining mortgage on the displacement dwelling, penalizes the displaced person for making a larger downpayment, we are retaining this provision. In addition, we have accepted a recommendation that the mortgage with the shortest term be used to compute the payment. FHWA has amended the procedures to reflect this adjustment.

The FHWA is interested in your experience with this new procedure for computing the mortgage interest differential payment.

Appendix B to Part 24—Statistical Report Form

The reformatted statistical report form includes a new line item for reporting payments for the statutory business reestablishment expense entitlement. (See line 7A). Several comments were received regarding the information required in Part B, column (A). More accurate statistical analyses can be obtained by changing the requirement for column (A) to displacements instead of number of claims since a displaced person may receive more than one claim in several categories. The heading for column (A) has been changed to number of displacements.

As required by Section 1320.21 of OMB's new paperwork clearance regulation that was published in the **Federal Register** on May 10, 1988, we have included an agency disclosure notice for public reporting on the STATISTICAL REPORT FORM.

A request was received from HUD to add new items to the statistical report form to collect race, sex, ethnicity, handicap and familial status data. These items were not included in the report form presented in the NPRM and, therefore, FHWA does not have the benefit of public comment on what, if any, paperwork burden such additional information collection would have on agencies or persons carrying out acquisition or displacement activities. Therefore, the report form format remains unchanged at this time except for the minor alteration referred to above.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291 or a significant rule under the regulatory policies and procedures of the Department of Transportation. Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or has certain other specified effects.

The economic impacts of this final rule are primarily mandated by the provisions of the 1987 Amendments. However, since some of the statutory changes are administrative or procedural, savings to Federal, State, and local agencies should result in the administration of the Uniform Act. Other statutory changes, which alter benefit levels, and expand the Act's application to include certain private persons who receive Federal financial assistance, and persons displaced by certain nonacquisition activities, should result in a modest increase in amounts paid under the Uniform Act.

However, we do not believe that the proposed regulations will have an annual economic effect of $100 million or more, or the other effects listed in the Executive Order. For this reason, FHWA has determined that this regulation is not a major rule within the meaning of the Order.

Federal agencies administering direct Federal activities, as well as many states, currently have the necessary authority to comply with the additional provisions of the 1987 Amendments implemented in this rule. To delay the promulgation of the amendments made in this rule would deprive many parties of the protections and benefits intended by those provisions of the 1987 Amendments. Accordingly, the FHWA finds good cause to make this regulation effective without the 30-day delay in effective date under the Administrative Procedures Act, 5 U.S.C. 553(b).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that for each rule with a "significant economic impact on a substantial number of small entities" an analysis be prepared describing the rules impact on small entities, and identifying any significant alternatives to the rule that would minimize the economic impacts on small entities.

The provisions of the Uniform Act that are implemented in this final rule have not changed substantially. The primary impact of the 1987 Amendments is expected to be an increase in benefits provided to small businesses, the elimination of unnecessary administrative requirements imposed on State and local agencies, and the consequent reduction of burden on those affected entities, and the expansion of the Act's application to those private entities that seek and receive Federal financial assistance.

In response to comments received from rural electric cooperatives FHWA has considered the impact that this rule would have on such cooperatives. Primarily for the reasons provided elsewhere in the preamble we have concluded that this regulation would not have a significant economic impact on a substantial number of small electric cooperatives.

Based on information available to FHWA at this time and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Requirements

Today's final rule makes one change to the Uniform Act Report form, which is contained in Appendix B of Part 24. A new item, 7A, is added to obtain information relating to the new business reestablishment payment added by the 1987 Amendments. Several minor editorial changes have also been made in this form. Federal funding agencies which elect to require a report on Uniform Act activities will submit the revised form to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3504(h), the Paperwork Reduction Act, Pub. L. 96-511. Agencies may continue to use the previous report form until OMB approval is granted.

Federalism Assessment

As discussed in the Supplementary Information sections of this preamble, this final rule builds upon the positive Federalism accomplishments achieved in the promulgation of the governmentwide common rule on February 27, 1986 (51 FR 7000) which significantly reduced administrative burdens on States and local recipients of Federal financial assistance. The FHWA has determined that the Federalism accomplishments of the common rule are retained in today's rule and the changes which have been made are fully consistent with the principles and criteria contained in Executive Order 12612 and do not have sufficient further Federalism implications to warrant the preparation of a complete Federalism Assessment.

This final rule implements a provision of the 1987 Amendments that gives substantial additional discretion to the States. This is the *certification procedure* which provides an alternative whereby State agencies, with adequate

authority under State law, can comply with the Uniform Act with a minimum amount of Federal supervision or oversight. This certification procedure would give maximum authority and control to the State governor, or his or her designee, in managing and coordinating the certification procedure in each State.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Accordingly, Title 49 of the Code of Federal Regulations is amended as set forth below.

Issued on: February 22, 1989.

Robert E. Farris,

Federal Highway Administrator.

Part 24 is revised to read as follows:

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); and 49 CFR 1.48(cc).

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such personal will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

§ 24.2 Definitions.

(a) *Agency.* The term "Agency" means the Federal agency, State, State agency, or person that acquires real property or displaces a person.

(1) *Acquiring agency.* The term "acquiring agency" means a State agency, as defined in paragraph (a)(2) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such authority. Any Agency or person solely acquiring property pursuant to the provisions of § 24.101(a) (1), (2), (3), or (4) need not provide the assurances required by § 24.4(a)(1) or (2).

(2) *Displacing agency.* The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(3) *Federal agency.* The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(4) *State agency.* The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(b) *Appraisal.* The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the

presentation and analysis of relevant market information.

(c) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public: or

(3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(d) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See Appendix A of this part);

(3) Adequate in size to accommodate the occupants;

(4) In an area not subject to unreasonable adverse environmental conditions;

(5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2).);

(7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part.); and

(8) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in § 24.401(c), all increased mortgage interest costs as described at § 24.401(d) and all incidental expenses as described at § 24.401(e), plus any additional amount required to be paid under § 24.404, Replacement housing of last resort.

(ii) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at § 24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under § 24.404, Replacement housing of last resort.

(e) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5000; or

(2) Had average annual net earnings of at least $1000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(f) *Decent, safe, and sanitary dwelling.* The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(g) *Displaced person*— (1) *General.* The term "displaced person" means any person who moves from the real property or moves his or her personal property from the real property: (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at § 24.401(a) and 24.402(a)):

(i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

(ii) As a direct result of rehabilitation or demolition for a project; or

(iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(i) A person who moves before the initiation of negotiations (see also § 24.403(e)), unless the Agency determines that the person was displaced as a direct result of the program or project; or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(iv) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see Also Appendix A of this part); or

(v) An owner-occupant who moves as a result of an acquisition as described at §§ 24.101(a) (1) and (2) , or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.); or

(vi) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(vii) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(viii) An owner-occupant who voluntarily conveys his or her property, as described at § 24.101(a) (1) and (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(x) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93–477 or Pub. L. 93–303; or

(xi) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations (see paragraph (y) of this section), or a person who has been evicted for cause, under applicable law, as provided for in § 24.206.

(h) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(i) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(j) *Federal financial assistance.* The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(k) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

(1) Whenever the displacement results from the acquisition of the real property by a Federal agency or State agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery to the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96–510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Lead agency.* The term "lead agency" means the Department of Transportation acting through the Federal Highway Administration.

(m) *Mortgage.* The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(n) *Nonprofit organization.* The term "nonprofit organization" means an organization that is incorporated under the applicable laws of a State as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(o) *Notice of intent to acquire or notice of eligibility for relocation assistance.* Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.

(p) *Owner of a dwelling.* A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(1) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (p) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(q) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(r) *Program or project.* The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

(s) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(t) *Small business.* A business having at least one, but not more than 500 employees working at the site being acquired or displaced by a program or project.

(u) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands or a political subdivision of any of these jurisdictions.

(v) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(w) *Uneconomic remnant.* The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

(x) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 *et seq.*; Pub. L. 91–646), and amendments thereto.

(y) *Unlawful occupancy.* A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

(z) *Utility costs.* The term "utility costs" means expenses for heat, lights, water and sewer.

(aa) *Utility facility.* The term "utility facility" means any electric, gas, water, steampower, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(bb) *Utility relocation.* The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined by the Agency to have the same purpose and effect as such payment under this part. (See Appendix A of this part, § 24.3.)

§ 24.4 Assurances, monitoring and corrective action.

(a) *Assurances*—(1) Before a Federal agency may approve any grant to, or contract, or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(2) If a Federal agency or State agency provides Federal financial assistance to a "person" causing displacement, such Federal or State agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a State agency after it has accepted a certification by such State agency in accordance with the requirements in Subpart G of this part.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603, Subpart G.)

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the Agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) The Flood Disaster Protection Act of 1973 (Pub. L. 93–234).

(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

(h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order l2259.

(i) Executive Order 11246—Equal Employment Opportunity.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(n) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

§ 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Appendix B of this part.

§ 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

(1) Voluntary transactions that meet all of the following conditions:

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner of what it believes to be the fair market value of the property.

(2) Acquisitions for programs or projects undertaken by an agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property.

(3) The acquisition of real property from a Federal agency, State, or State agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(b) *Less-than-full-fee interest in real property.* In addition to fee simple title, the provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (See Appendix A of this part, § 24.101(b).)

(c) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See § 24.4(a).)

§ 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the owner by law and this part. (See also § 24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.* (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in § 24.102(c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at $2,500 or less, based on a review of available data.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for

construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(w).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§ 24.103 Criteria for appraisals.

(a) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(s)) of the retained improvement.

(d) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(e) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500, or less.

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § 24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a

tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole Property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(s).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real Property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in § 24.102(c)(2).

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 24.2(g).

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 24.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice*—(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(d)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the

relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ 24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, Federal and Federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the lead agency will establish criteria and procedures for such use upon the request of the Federal agency funding the program or project.

(c) *Relocation assistance advisory services*—(1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(ii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(A) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(B) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 24.2 (d) and (f).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(C) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(D) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(iii) Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to

displaced persons, and technical help to persons applying for such assistance.

(vi) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (Also see § 24.6, Subpart A.)

§ 24.206 Eviction for cause.

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(a) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(b) The person is evicted after the initation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(c) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing*—(1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 24.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D—Payments for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

§ 24.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under § 24.301. This allowance shall be determined according to the applicable schedule approved by the

Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.

§ 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) Eligible costs. Any business or farm operation which qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for:

(i) Planning the move of the personal property,

(ii) Moving the personal property, and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§ 24.304 Reestablishment expenses—nonresidential moves.

In addition to the payments available under § 24.303 of this subpart, a small business, as defined in § 24.2(t), farm or nonprofit organization may be eligible to

receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs, not to exceed $1,500 for exterior signing to advertise the business.

(4) Provision of utilities from right-of-way to improvements on the replacement site.

(5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

(6) Licenses, fees and permits when not paid as part of moving expenses.

(7) Feasibility surveys, soil testing and marketing studies.

(8) Advertisement of replacement location, not to exceed $1,500.

(9) Professional services in connection with the purchase or lease of a replacement site.

(10) Estimated increased costs of operation during the first 2 years at the replacement site, not to exceed $5,000, for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv) Utility charges, excluding impact fees.

(11) Impact fees or one-time assessments for anticipated heavy utility usage.

(12) Other items that the Agency considers essential to the reestablishment of the business.

(13) Expenses in excess of the regulatory maximums set forth in paragraphs (a) (3), (8) and (10) of this section may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may, at the request of the Agency, be waived by the Federal agency funding the program or project, but in no event shall total costs payable under this section exceed the $10,000 statutory maximum.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in paragraph (a)(5) of this section.

(4) Interest on money borrowed to make the move or purchase the replacement property.

(5) Payment to a part-time business in the home which does not contribute materially to the household income.

§ 24.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under § 24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.304(a)(10); or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§ 24.303(a)(3) and § 24.304(a); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

§ 24.306 Fixed payment for moving expenses—nonresidential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 24.303 and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others.

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 24.2(e)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(i)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings

as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of $1,000 to $20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See Appendix A of this part).

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§ 24.307 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see §§ 24.2 (aa) and (bb)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is in accordance with State law.

(b) For the purposes of this section, the term "extraordinary expenses" means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See Appendix A, of this part, § 24.307.)

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or

(ii) The date the displacing agency's obligation under § 24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $22,500. (See also § 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential*—(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 24.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(f)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, § 24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d) (1) through (5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination the payment will be prorated and reduced accordingly. (See Appendix A of this part.) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage (s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $5,250, computed and disbursed in accordance with § 24.402(b).

§ 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date

the full amount of the estimate of just compensation is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance. (See also § 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or

(ii) Thirty (30) percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.); or

(iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed $5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 180-day occupancy requirement. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) is not eligible for this payment. (See also Appendix A of this part, § 24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(d)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 24.205(a)(2) and Appendix A of this part). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(f).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

§ 24.404 Replacement housing of last resort.

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area; and

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person; or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)

(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers to the handicapped.

(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see Appendix A, of this part, § 24.404), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolesence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 24.2(d)(2).

(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§ 24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

Subpart F—Mobile Homes

§ 24.501 Applicability.

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ 24.502 Moving and related expenses—mobile homes.

(a) A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with § 24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under § 24.303. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.503(a)(3), the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) The following rules apply to payments for actual moving expenses under § 24.301:

(1) A displaced mobile homeowner, who moves the mobile home to a

replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(2) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and the Agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

(3) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed $22,500, under § 24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at § 24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not acquired, and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§ 24.504 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 24.503(a)(3).

§ 24.505 Additional rules governing relocation payments to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either $22,500 or $5,250) permitted under the section that governs the computation for the dwelling. (See also § 24.403(b).)

(b) *Cost of comparable replacement dwelling*—(1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 24.401(c), the cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home,

(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under this part, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

Subpart G—Certification

§ 24.601 Purpose.

This subpart permits a State Agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4 of this part.

§ 24.602 Certification application.

(a) *General.* (1) The State governor, or his or her designee, on behalf of any State agency or agencies may apply for certification in accordance with this section.

(2) The governor may designate a lead agency to administer certification in accordance with this section.

(b) *Responsibilities of State agency*—(1) The State agency's application shall be submitted to the governor, or his or her designee, for approval or disapproval.

(2) The State agency application shall contain a statement that the State agency shall carry out the responsibilities imposed by the Uniform Act. The State agency application shall include a copy of the State laws and regulations which shall accomplish the purpose and effect of the Uniform Act.

(c) *Responsibilities of governor or his or her designee.* (1) The governor, or his or her designee, shall approve or

disapprove the State agency's application.

(2) The governor, or his or her designee, shall have discretion to disapprove any State agency application.

(3) The governor, or his or her designee, shall analyze State law and regulations and shall certify that they accomplish the purpose and effect of the Uniform Act.

(4) The governor, or his or her designee, shall determine in writing whether the State agency's professional staffing is adequate to fully implement the State law and regulations.

(5) If the State agency's application is approved by the governor, or his or her designee, it shall be transmitted to the Federal agency providing financial assistance to the State agency, with an information copy to the Federal lead agency.

(6) When a determination is received from the Federal funding agency, the governor, or his or her designee, shall notify the State agency.

(d) *Responsibilities of Federal funding agency.* (1) The Federal funding agency shall accept the approved application for certification provided by the governor or his or her designee and shall not conduct an independent review unless or until future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(2) The Federal funding agency shall transmit all complete, approved applications, for certification to the Federal lead agency.

(3) At the same time as transmission to the Federal lead agency or during the public comment period, the Federal funding agency shall provide to the lead agency its written assessment of the State agency's capabilities to operate under certification.

(4) The Federal funding agency shall promptly notify the governor, or his or her designee, of the Federal lead agency's determination described in paragraph (e)(2) of this section.

(5) The Federal funding agency shall recognize the State agency's certification within 30 days of the Federal lead agency's finding.

(e) *Responsibilities of Federal lead agency.* (1) The lead agency shall:

(i) Accept the approval provided by the governor, or his or her designee, and shall not conduct an independent review, except as provided for in paragraphs (e)(1)(ii), (iii) and (iv) of this section, unless future monitoring or other appropriate indicators reveal program deficiencies originating therefrom;

(ii) Analyze the extent to which the provisions of the applicable State laws and regulations accomplish the purpose and effect of the Uniform Act, with particular emphasis on the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to persons in such categories;

(iii) Provide a 60-day period of public review and comment, and solicit and consider the views of interested general purpose local governments within the State, as well as the views of interested Federal and State agencies and consider all comments received as a result; and

(iv) Consider any extraordinary information it believes to be relevant.

(2) After considering all the information provided, the lead agency shall either make a finding that the State agency will carry out the Federal agency's Uniform Act responsibility in accordance with State laws and regulations which shall accomplish the same purpose and effect as the Uniform Act, or shall make a determination that a finding cannot be made; and shall so inform the Federal funding agency.

§ 24.603 Monitoring and corrective action.

(a) The Federal lead agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and the State agency shall make available any information required for this purpose.

(b) A Federal agency that has accepted a State Agency's certification pursuant to this subpart should withhold its approval of any of its Federal financial assistance to any project, program, or activity, in progress or to be undertaken by such State agency, if it is found by the Federal agency that the State agency has failed to comply with the applicable State law and regulations implementing those provisions of the Uniform Act for which the State agency would otherwise have provided the assurances required by sections 210 and 305 of the Uniform Act. The Federal agency may withhold Federal financial assistance if the certifying State agency fails to comply with the applicable State law and regulations implementing other provisions of the Uniform Act. The Federal agency shall notify the lead agency at least 15 days prior to any decision to withhold funds under this subpart. The lead agency may consult with the Federal agency upon receiving such notification. The lead agency will also inform other Federal agencies which have accepted certification under this subpart from the same State agency of the pending action.

(c) A Federal agency may, after consultation with the lead agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations. The Federal agency shall initiate consultation with the lead agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The lead agency will also inform other Federal agencies which have accepted a certification under this subpart from the same State agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected Federal or State agencies.

Appendix A to Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2 Definitions

Section 24.2(d)(2) Definition of comparable replacement dwelling. The requirement in § 24.2(d)(2) that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement

dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling.

Section 24.2(d)(7) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HU Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(g)(2) Persons not displaced. Section 24.2(g)(2)(iv) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with § 24.10.

Section 24.2(k) Initiation of negotiations. This section of the part; provides a special definition for acquisitions and displacements under Pub. L. 96–510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 24.3 No Duplication of Payments

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section 24.9 Recordkeeping and Reports

Section 24.9(c) Reports. This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section 24.101 Applicability of Acquisition Requirements

Section 24.101(b) Less-than-full-fee interest in real property. This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 24.102 Basic Acquisition Policies

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental. Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value * * * to a short-term occupier." Generally, the Agency's right to

terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.103 Criteria for Appraisals

Section 24.103(a) Standards of appraisal. In paragraph (a)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(e) Conflict of interest. The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, § 24.103(e) provides that the same person may both appraise and negotiate an acquisition, if the value is $2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at $2,500, or less.

Section 24.104 Review of appraisals

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 24.106 Expenses Incidental to Transfer of Title to the Agency

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements

Section 24.204 Availability of Comparable Replacement Dwelling Before Displacement

Section 24.204 (a) General. This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation Assistance Advisory Services

Section 24.205(c)(2)(ii)(C) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.207 General Requirements—Claims for Relocation Payments

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in § 24.303(c).

Subpart D—Payment for Moving and Related Expenses

Section 24.306 Fixed Payment for Moving Expenses—Nonresidential Moves

Section 24.306(d) Nonprofit organizations. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

Section 24.307 Discretionary Utility Relocation Payments

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement Housing Payment for 180-Day Homeowner-Occupants

Section 24.401(a)(2). The provision for extending eligibility for a replacement housing payment beyond the one year period for good cause means that an extension may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction of a replacement dwelling or other like circumstances should cause delays in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c) Price differential. The provision in § 24.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in § 24.401(d) set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buydown."

The remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage aa well as the interest rate, points and term for the new mortgage must be known to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

Sample Computation

Old Mortgage:	
Remaining Principal Balance	$50,000
Monthly Payment (principal and interest)	458.22
Interest rate (percent)	7
New Mortgage:	
Interest rate (percent)	10
Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. (Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee). However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of $458.22 at 10%—$42,010.18

	$50,000.00
	−42,010.18
Increased mortgage interest costs	7,989.82
3 points on $42,010.50	1,260.31
Total buydown necessary to maintain payments at $458.22/month	9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were $35,000, the buydown payment would be $7,706.57 ($35,000 ÷ by $42,010.18 = .83 $9,250.13 × .83 = $7,706.57).

The Agency is obligated to inform the person of the approximate amount of this payment and that he or she must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The displacee is also to be advised of the interest rate and points used to calculate the payment.

Section 24.402 Replacement Housing Payment for 90-Day Occupants

The downpayment assistance provisions in § 24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the $5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects. It is recommended that displacing agencies coordinate with each other to reach a consensus on a uniform procedure for the State and/or the local jurisdiction.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

Section 24.403 Additional Rules Governing Replacement Housing Payments

Section 24.403(a)(1). The procedure for adjusting the asking price of comparable replacement dwellings requires that the agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy one of the selected comparables, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.

Section 24.404 Replacement Housing of Last Resort

Section 24.404(b) Basic rights of persons to be displaced. This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(p). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. The use of cost effective means of providing comparable replacement housing is implied throughout the subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Subpart F—Mobile Homes

Section 24.503 Replacement Housing Payment for 180-Day Mobile Homeowner-Occupants

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 24.401 and a replacement housing payment for a site computed under § 24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 24.401 to assist in the purchase of a replacement site or, under § 24.402, to assist in renting a replacement site.

Appendix B to Part 24—Statistical Report Form

This appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100–17, 101 Stat. 132.

2. *Report period.* Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1 through September 30.

3. *Where and when to submit report.* Submit an original and two copies of this report to (*Name and Address of Federal Agency*) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* The references in Part B indicate the section of the Uniform Act that authorizes the cost.

Part A. Persons displaced

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation payments and expenses

Columns (A) and (B). Report in Column (A) the number of displacements during the report year. Report in Column (B) the total amount represented by the displacements reported in Column (A).

Line 7A is a new line item for reporting the business reestablishment expense payment.

Lines 7A and 9, Column (B). Report in Column (B) the amount of costs that were included in the total amount approved on Lines 6 and 8, Column (B).

Lines 12 A and B. Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act. Report in Column (B) the total financial assistance under section 20; (a) allocable to the households reported in Column (A). (If a household received financial assistance under section 203 or section 204 as well as under section 20; (a) of the Uniform Act, report the household as a displacement in Column (A), but in Column (B) report *only* the amount of financial assistance allocable to section 206(a). For example, if a tenant-household receives a payment of $7,000 to rent a replacement dwelling, the sum of $5,250 shall be included on Line 10, Column (B), and $1,750 shall be included on Line 12B, Column (B).)

Line 13. Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

Line 15. Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

Part C. Real property acquisition subject to Uniform Act

Line 16, Columns (A) and (B). Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

BILLING CODE 4910-22-M

UNIFORM RELOCATION ASSISTANCE
AND REAL PROPERTY ACQUISITION
STATISTICAL REPORT FORM

Form Approved
OMB No:
Exp. Date:
Attachment - Appendix B

FEDERAL FISCAL YEAR ENDING SEPT. 30, 19__

REPORTING AGENCY _____

CITY/COUNTY/STATE _____

FEDERAL FUNDING AGENCY _____

The burden for this report is estimated to average hours per response, including reviewing instructions, searching data sources, gathering/maintaining data, and completing/reviewing the report. Send comments to: Federal Highway Administration, Office of Right-of-Way, Washington, D.C. 20590 and to: Office of Management and Budget, Paperwork Reduction Project (2105-0508), Washington, D.C. 20503.

PART A. PERSONS DISPLACED BY ACTIVITIES SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	TOTAL(A)	OWNERS (B)	TENANTS(C)
1. HOUSEHOLDS (FAMILIES & INDIVIDUALS)			
2. BUSINESSES & NONPROFIT ORGANIZATIONS			
3. FARMS			

PART B. RELOCATION PAYMENTS & EXPENSES UNDER THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM		NO. OF DISPLACEMENTS	AMOUNT(B)
4. PAYMENTS FOR MOVING HOUSEHOLDS	ACTUAL EXPENSES-SEC. 202(A)		
5. PAYMENTS FOR MOVING HOUSEHOLDS	SCHEDULE PAYMENT/DISLOCATION ALLOWANCE-SEC. 202(B)		
6. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO	ACTUAL EXPENSES-SEC 202(A)		
7. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO	IN LIEU PAYMENTS-SEC. 202(C)		
7A. NO. OF CLAIMS AND AMOUNT ON LINE 6 ATTRIBUTABLE TO REESTABLISHMENT EXPENSES			
8. REPLACEMENT HOUSING PAYMENTS FOR 180-DAY HOMEOWNERS-SEC. 203(A)			
9. NO. OF CLAIMS AND AMOUNT ON LINE 8 ATTRIBUTABLE TO INCREASED MORTGAGE INTEREST COSTS			
10. RENTAL ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(1)			
11. DOWNPAYMENT ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(2)			
12A. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)	OWNERS		
12B. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)	TENANTS		
13. RELOCATION ADVISORY SERVICES COSTS-SEC. 205		[redacted]	
14. TOTAL (SUM OF LINES 4(B) THROUGH 13(B)), EXCLUDING LINES 7A AND 9		[redacted]	
15. RELOCATION GRIEVANCES FILED DURING THE FISCAL YEAR IN CONNECTION WITH PROJECT/PROGRAM			[redacted]

PART C. REAL PROPERTY ACQUISITION SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	NO. OF PARCELS (A)	COMPENSATION(B)
16. TOTAL PARCELS ACQUIRED		
17. TOTAL PARCELS ACQUIRED BY CONDEMNATION INCLUDED ON LINE 16 WHERE PRICE DISAGREEMENT WAS INVOLVED		[redacted]

[FR Doc. 89-4543 Filed 3-1-89; 8:45 am]
BILLING CODE 4910-22-C

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses; Residential Moves

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the alternative moving expense and dislocation allowance schedule for persons displaced from dwellings in each State, the District of Columbia, Puerto Rico, and the Virgin Islands as required by section 405(b) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100–17, 101 Stat. 132 (1987 Amendments).

EFFECTIVE DATE: The provisions of this Notice are effective March 2, 1989. For further information about implementation dates, see the discussion in the supplementary information section below.

FOR FURTHER INFORMATION CONTACT: Barbara J. Satorius, Policy Development Branch, Office of Right-of-Way (202–366–2043); or Reid Alsop, Office of the Chief Counsel (202–366–1371), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours, Monday-Friday are from 7:30 a.m. to 4:00 p.m., e.t.

SUPPLEMENTARY INFORMATION: Section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (Uniform Act), as amended by section 405(b) of the 1987 Amendments, provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a moving expense and dislocation allowance schedule established by the head of the lead agency as an alternative to being paid for moving and related expenses actually incurred. Section 405(b) eliminated statutory limitations on the amounts that could be paid pursuant to such a schedule. Implementing regulations at 49 CFR 24.302 provide that the FHWA will develop and approve this schedule.

The purpose of this notice is to publish the schedule approved by the FHWA for use in payment determinations by all Federal, State and local governments, and persons affected by the Uniform Act, as amended. It has been developed from data provided by State highway agencies, and incorporates the dislocation allowance within the schedule's payment amounts. The exceptions and limitations are as follows:

1. The expense and dislocation allowance to a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.00.

2. An occupant will be paid on an actual cost basis for moving his or her mobile home from the displacement site. In addition, a reasonable payment to the occupant for packing and securing personal property for the move may be paid at the agency's discretion.

3. The expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons shall be limited to $50.00.

An occupant who moves from a mobile home may be paid for the removal of personal property from the mobile home in accordance with the moving and dislocation allowance payment schedule.

Any government, agency or person that is in compliance with 49 CFR Part 24 may implement the schedule being published today. Any government, agency or person that is unable to comply with 49 CFR Part 24 at this time may continue to use the moving expense schedule published in the **Federal Register** on December 30, 1986, until the schedule published here becomes mandatory on April 2, 1989, the date that the 1987 Amendments and 49 CFR Part 24 become fully applicable.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(42 U.S.C. 4601; 49 CFR 24.302(a)).

Issued on February 24, 1989.

Robert E. Farris,

Federal Highway Administrator.

BILLING CODE 4910-22-M

RESIDENTIAL MOVING EXPENSE & DISLOCATION ALLOWANCE PAYMENT SCHEDULE

STATE	OCCUPANT OWNS FURNITURE (1) & (2)									OCCUPANT DOES NOT OWN FURNITURE (3)	
	NUMBER OF ROOMS OF FURNITURE								EACH ADD. ROOM	FIRST ROOM	EACH ADD. ROOM
	1	2	3	4	5	6	7	8			
ALABAMA	250	350	450	550	625	700	775	850	75	200	25
ALASKA	350	500	650	800	925	1050	1175	1300	100	225	35
ARIZONA	250	400	550	650	750	850	950	1050	100	225	35
ARKANSAS	250	350	450	550	625	700	775	850	75	200	25
CALIFORNIA	250	400	550	650	750	850	950	1050	100	225	35
COLORADO	250	400	550	650	750	850	950	1050	100	225	35
CONNECTICUT	250	400	550	650	750	850	950	1050	100	225	35
DELAWARE	250	350	450	550	625	700	775	850	75	200	25
D. C.	250	400	550	650	750	850	950	1050	100	225	35
FLORIDA	250	350	450	550	625	700	775	850	75	200	25
GEORGIA	250	350	450	550	625	700	775	850	75	200	25
HAWAII	250	400	550	650	750	850	950	1050	100	225	35
IDAHO	250	350	450	550	625	700	775	850	75	200	25
ILLINOIS	250	400	550	650	750	850	950	1050	100	225	35
INDIANA	250	400	550	650	750	850	950	1050	100	225	35
IOWA	250	350	450	550	625	700	775	850	75	200	25
KANSAS	250	350	450	550	625	700	775	850	75	200	25
KENTUCKY	250	400	550	650	750	850	950	1050	100	225	35
LOUISIANA	250	350	450	550	625	700	775	850	75	200	25
MAINE	250	350	450	550	625	700	775	850	75	200	25
MARYLAND	250	400	550	650	750	850	950	1050	100	225	35
MASSACHUSETTS	250	400	550	650	750	850	950	1050	100	225	35
MICHIGAN	250	400	550	650	750	850	950	1050	100	225	35
MINNESOTA	250	400	550	650	750	850	950	1050	100	225	35
MISSISSIPPI	250	350	450	550	625	700	775	850	75	200	25
MISSOURI	250	350	450	550	625	700	775	850	75	200	25
MONTANA	250	350	450	550	625	700	775	850	75	200	25
NEBRASKA	250	350	450	550	625	700	775	850	75	200	25
NEVADA	250	400	550	650	750	850	950	1050	100	225	35
NEW HAMPSHIRE	250	350	450	550	625	700	775	850	75	200	25
NEW JERSEY	250	400	550	650	750	850	950	1050	100	225	35
NEW MEXICO	250	400	550	650	750	850	950	1050	100	225	35
NEW YORK	250	400	550	650	750	850	950	1050	100	225	35
NORTH CAROLINA	250	350	450	550	625	700	775	850	75	200	25
NORTH DAKOTA	250	350	450	550	625	700	775	850	75	200	25
OHIO	250	400	550	650	750	850	950	1050	100	225	35
OKLAHOMA	250	350	450	550	625	700	775	850	75	200	25
OREGON	250	400	550	650	750	850	950	1050	100	225	35
PENNSYLVANIA	250	400	550	650	750	850	950	1050	100	225	35
PUERTO RICO	250	350	450	550	625	700	775	850	75	200	25
RHODE ISLAND	250	350	450	550	625	700	775	850	75	200	25
SOUTH CAROLINA	250	350	450	550	625	700	775	850	75	200	25
SOUTH DAKOTA	250	350	450	550	625	700	775	850	75	200	25
TENNESSEE	250	350	450	550	625	700	775	850	75	200	25
TEXAS	250	350	450	550	625	700	775	850	75	200	25
UTAH	250	350	450	550	625	700	775	850	75	200	25
VERMONT	250	350	450	550	625	700	775	850	75	200	25
VIRGIN ISLANDS	250	350	450	550	625	700	775	850	75	200	25
VIRGINIA	250	400	550	650	750	850	950	1050	100	225	35
WASHINGTON	250	400	550	650	750	850	950	1050	100	225	35
WEST VIRGINIA	250	400	550	650	750	850	950	1050	100	225	35
WISCONSIN	250	400	550	650	750	850	950	1050	100	225	35
WYOMING	250	350	450	550	625	700	775	850	75	200	25

Exceptions: See supplementary information.

(1) Person whose residential move is performed by agency, $50.
(2) Move of a mobile home from site, actual cost; reasonable amount may be added for packing and securing personal property for the move at agency discretion.
(3) Occupant of dormitory, $50.

[FR Doc. 89-4780 Filed 3-1-89; 8:45 am]
BILLING CODE 4910-22-C

federal register

Thursday
March 2, 1989

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 291

Methadone; Rule, Proposed Rules, and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 291

[Docket No. 83N-0249]

National Institute on Drug Abuse; Methadone in Maintenance and Detoxification; Joint Revision of Conditions for Use

AGENCIES: Food and Drug Administration and National Institute on Drug Abuse.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA) are issuing a final rule to revise the conditions for the use of methadone in maintenance and detoxification treatment. Among other changes, the rule provides standards for long-term detoxification, as required by Pub. L. 98-509, which revised the statutory definition of detoxification treatment from 21 days to 180 days. Other revisions are designed to streamline the regulation, to delete the requirement that treatment programs using methadone submit annual reports to FDA, and to promote more efficient operation of narcotic treatment programs.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Meyer, or Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION:

Introduction

The conditions for the use of methadone in the maintenance and detoxification treatment of narcotic addicts are provided for in 21 CFR Part 291 (the methadone regulation). The methadone regulation also delineates the appropriate methods of professional practice for medical treatment of the narcotic addiction of various categories of addicts. (See 21 CFR 291.505.)

In the **Federal Register** of October 2, 1987 (52 FR 37046), FDA and NIDA jointly published a proposed regulation to revise the conditions for the use of methadone in maintenance and detoxification treatment. The proposal was generally based upon the comments received in response to a notice of intent to propose revisions to the methadone regulation published in the **Federal Register** of September 13, 1983 (48 FR 41049). As discussed in the preamble to the proposal, most comments received on the September 1983 notice argued that the methadone regulation not be substantially revised and that the requirements of the methadone regulation are generally neither unreasonable nor burdensome. FDA and NIDA agreed with these comments and proposed revisions that did not involve major substantive changes, but instead were designed to streamline the regulation and to promote more efficient operation of narcotic treatment programs. The most significant of the proposed revisions would allow for extended detoxification treatment, up to 180 days, to conform to a recent amendment to the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) and proposed the development of a separate guideline consisting of those provisions of the methadone regulation that were not legal requirements. Elsewhere in this issue of the **Federal Register**, FDA and NIDA are publishing a notice of the availability of a separate guidance document consisting of recommended practices in the maintenance and detoxification treatment of narcotic addicts. As was proposed in the October 2, 1987, **Federal Register**, this guidance document is based upon those provisions of the prior methadone regulation that were not legal requirements.

Also in this issue of the **Federal Register**, FDA and NIDA are publishing a proposed rule to provide minimum service maintenance treatment to patients awaiting placement in comprehensive maintenance treatment. The proposal is in response to the human immunodeficiency virus (HIV) epidemic and is intended to allow programs additional flexibility to admit more narcotic addicts into treatment as quickly as possible and to assure the availability of counseling on avoiding transmission of the HIV.

In addition, elsewhere in this issue of the **Federal Register**, FDA and NIDA are publishing an advance notice of proposed rulemaking soliciting comments on a pilot study designed to help identify improved measures of methadone program performance and thus enhance the quality of treatment.

Comments

In response to the proposal, FDA and NIDA received 42 comments. These comments represented many interests—concerned citizens; members of Congress; Federal, State, and local government authorities; narcotic treatment programs and counseling services; the medical community as represented by the American Medical Association and the American Psychiatric Association; a pharmaceutical manufacturer; and a drug testing laboratory. A section-by-section analysis of the comments and the agencies' responses to them are set out below.

Definitions

1. One comment questioned why the proposed definition of "maintenance treatment" under § 291.505(a)(2) did not specifically state that it was longer than 180 days. Another comment characterized the proposed definition as inadequate because it lacks the concepts of dosage stabilization, rehabilitative services, and a treatment goal of an eventual drug-free state.

In the preamble to the proposed rule (52 FR 37046), FDA and NIDA stated that it had as one of its goals the streamlining of the current regulation. The agencies believe that including the concepts stated by the comments and a time in treatment period is not appropriate for definitional purposes because the definition of "maintenance treatment" is not dependent upon or limited by such concepts or time period. The agencies note, however, that for the purpose of establishing the conditions for use of narcotic drugs in hospitals for detoxification treatment (see § 291.505(f)(2) of the final rule), if a narcotic drug is administered to a patient for treatment of narcotic dependence for more than 180 days, the procedure is no longer considered detoxification but is, instead, considered maintenance treatment.

2. One comment read the proposed definition of "medication unit" under § 291.505(a)(4)(ii) as authorizing private practitioners and local pharmacists to conduct drug testing or analyses. The comment recommended that only approved analytical laboratories be authorized to conduct drug testing or analyses.

FDA and NIDA agree that the wording of proposed § 291.505(a)(4)(ii) could be construed as the comment has suggested. As set forth in § 291.505(d)(2)(i) of the final rule, each testing laboratory selected by a program that performs the testing required under this regulation must be in compliance with all applicable Federal proficiency testing and licensing standards and applicable State standards. It is not the agencies' intention to authorize, without an application for separate approval, licensed private practitioners and community pharmacists to provide services at medication units other than administering or dispensing methadone and collecting samples for drug testing or analysis for narcotic drugs. (See

§ 291.505(b)(3)(v) of the final rule.) Thus, for the sake of clarity, the definition in § 291.505(a)(4)(ii) of the final rule states that a medication unit is a facility from which licensed private practitioners and community pharmacists are authorized to collect samples for drug testing or analysis for narcotic drugs.

3. One comment disagreed with the proposed rule's definition of "narcotic treatment program" under § 291.505(a)(6) in that it does not incorporate concepts of counseling and medical treatment.

FDA and NIDA disagree with this comment. The definition states that a "narcotic treatment program" must provide, when appropriate or necessary, a comprehensive range of medical and rehabilitative services.

Minimum Testing or Analysis for Drugs: Uses and Frequency

4. One comment stated that the proposed probation scheme under § 291.505(d)(6)(v)(B)(*2*) seemingly places too strong a reliance on the accuracy and utility of urine testing to ensure that take-home patients were ingesting their methadone. The comment noted that some sensitive drug testing methods can detect methadone several days after consumption while some drug screening methods do not always indicate the presence of methadone 24 hours after supervised administration. It suggested that a negative result on a drug test for the presence of methadone not result in automatic action being taken in regards to probation, but that the program physician be given flexibility in interpreting the result.

FDA and NIDA recognize that test methods utilized for drug screening tests or analyses (e.g., immunoassay) do not, in general, provide the same level of analytical accuracy as would be obtained with test methods used for confirmation tests or analyses (e.g., gas chromatography/mass spectrometry). Thus, under the probationary scheme for take-home medication, a drug test result utilized by a program physician as the sole basis for placing a patient on probation is required to be a confirmed test result. FDA and NIDA believe that confirmed test results are accurate and reliable indicators of a patient's drug use and that a program physician can rely on them for probationary purposes. Also, the probation scheme does not preclude a program physician from placing a patient on probation based solely upon his or her clinical judgment (see § 291.505(d)(6)(v) of the final rule).

5. One comment said that including amphetamines and barbiturates in the list of mandatorily tested drugs under proposed § 291.505(d)(2) does not reflect the current patterns of illicit drug use. The comment stated that benzodiazepines have now largely replaced barbiturates as drugs of abuse, and that amphetamine abuse is now rare in many parts of the country. In order to provide for the most efficient allocation of resources, the comment suggested that opiates, methadone, and cocaine continue to be retained in the list of mandatorily tested drugs as well as two or three other drugs that would be most likely to be abused in a program's locality.

The current list of mandatorily tested drugs was adopted based on evidence of increased abuse of the listed drugs in the addict population. Screening for the listed drugs was intended to help the program physician to qualitatively distinguish the listed drugs of abuse and to confirm his or her clinical impression of a patient. Current information available to the agencies regarding the patterns of illicit drug use of amphetamines and barbiturates demonstrates a significant increase in the manufacture of illicit amphetamines and a continued, albeit sporadic, use of barbiturates. Thus, the agencies are not persuaded that any of the listed drugs should be deleted at this time. Because of this comment and other anecdotal reports regarding changing patterns of illicit drug use, the agencies are soliciting information and supportive data concerning the need to maintain or revise the list of mandatorily tested drugs in an advance notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

FDA and NIDA agree that there may be drugs of abuse in addition to those listed and that drugs that would be most likely to be abused in a program's locality should also be tested for. Accordingly, § 291.505(d)(2)(i) of the final rule states that if any other drug or drugs have been determined by a program to be abused in that program's locality, or as otherwise indicated, each test or analysis must be analyzed for any of those drugs as well.

6. Two comments expressed concern that the laboratory standards for methadone testing under proposed § 291.505(d)(2) would be confused with laboratory standards for employee drug testing for Federal employees set forth in "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published in the **Federal Register** of April 11, 1988 (53 FR 11970). The comments recommended that the regulation should clearly differentiate between the two laboratory standards.

The mandatory guidelines referenced in the comment were developed to establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order (E.O.) 12564 dated September 15, 1986, and section 503 of Pub. L. 100-71, the Supplemental Appropriations Act for fiscal year 1987 dated July 11, 1987. In section 1-1 entitled "Applicability" under Subpart A of these guidelines, it clearly states that they only apply to any laboratory that has or seeks a contract to perform, or otherwise performs urine drug testing for Federal agencies under a drug testing program conducted under E.O. 12564. Therefore, because these guidelines make clear that they do not apply to drug testing under any legal authority other than E.O. 12564, FDA and NIDA do not believe that it is necessary to revise the regulation as recommended.

7. One comment noted that the proposed laboratory examination for the serological test for syphilis under § 291.505(d)(3)(i) did not take into account the severely damaged state of some patients' veins. The comment recommended that the final rule allow program physicians some latitude in dealing with patients from whom it is impractical to draw blood. The comment noted that this revision would relieve the agency of the paperwork burden in granting individual exceptions to this requirement.

FDA and NIDA agree with this comment. Accordingly, § 291.505(d)(3)(i) of the final rule states that if, in the reasonable clinical judgment of the program physician, a patient's subcutaneous veins are severely damaged to the extent that a blood specimen cannot be obtained, the serological test for syphilis may be omitted. As with all findings from the admission medical evaluation, this finding must be recorded in the patient's record. (See § 291.505(d)(3)(ii) of the final rule.)

Minimum Staffing Patterns

8. Many comments supported the proposed elimination of minimum staffing ratio of 1 counselor to 50 patients. (See § 291.505(d)(7)(iii) of the former regulation.) The comments argued that many methadone clinics are fully enrolled and many narcotic addicts desiring treatment are currently placed on lengthy waiting lists because the current minimum staffing requirement requires a program to add a counselor in order to expand its capacity. One comment stated that the minimum staffing requirement should be included in the guideline and left up to States to enforce. In contrast, many comments objected to the elimination of this

minimum staffing requirement. One comment asserted that the current minimum counselor/patient ratio is already too low to ensure effective counseling. The general consensus of these comments was that inadequate staffing would compromise both treatment and patient care.

FDA and NIDA believe that it is inappropriate for this regulation to prescribe a minimum counselor/patient ratio that cannot take into account the specific needs of an individual program's patient population. Such an inflexible ratio could lead to misallocation of scarce treatment resources. The agencies recognize that a large number of programs require more than 1 counselor for every 50 patients to provide adequate care for their patients, and these programs will, under the requirement of § 291.505(d)(5) of the final rule, continue to find it necessary to have more than 1 counselor for every 50 patients. The former mandatory counselor/patient ratio of 1:50 is now stated as a recommended practice in the FDA and NIDA guidance document to reflect the agencies' belief that for a program with a patient population with typical counseling needs, a 1:50 counselor/patient ratio represents a minimum appropriate ratio to provide adequate counseling services. However, it would be a disservice to require programs to expend scarce resources to meet inflexible Federal requirements that do not take into account their individual patient population needs.

9. One comment objected to the proposed deletion of the former requirement (see § 291.505(b)(2)(i) of the former regulation) that the number of patients treated as a narcotic treatment medication unit not exceed 30 patients. The comment argued that without a numerical basis for the medication unit, there could be potential problems regarding treatment efficiency and recordkeeping.

The agencies believe that the maximum number of patients to be treated at a medication unit is an issue that is properly left to the judgment of the program. However, local health and planning agencies may wish to limit enrollment in the program, prescribe locations of medication units to ensure the availability of services throughout an area, and limit the environmental impact which such units may have on a community. Decisions about the size of a medication unit should be made on a case-by-case basis, taking into account many factors of a peculiarly local nature, and are, therefore, properly decided at a State or local level rather than by the Federal government. Whatever the enrollment at a medication unit, it will still be required to be adequately staffed to comply with all recordkeeping and other requirements of this regulation.

Rehabilitative Services

10. Three comments objected to the wording of the requirement under proposed § 291.505(b)(2)(iii) in that it did not incorporate the phrase "are being utilized." (See § 291.505(b)(1)(ii) of the former regulation.) The comments stated that the elimination of the former requirement that rehabilitative services must be utilized will de-emphasize the importance of rehabilitative services in narcotic treatment programs. One comment objected to the absence of minimum counseling and rehabilitative requirements and suggested that proposed § 291.55(d)(3)(iv)(A)(*1*) be amended to require that counseling and rehabilitative services be provided at least monthly during the first 2 years of treatment.

FDA and NIDA continue to believe that rehabilitative services are of key importance in the treatment of individuals for drug dependence and the final regulation requires that these services be made available. However, the agencies also believe that a program's staff is in the best position to determine what services are needed. The agencies recognize that in some cases a patient may not be ready for some rehabilitative services when he or she first enters treatment and other patients need for rehabilitative services may decrease the longer they are in a program. Therefore, the agencies believe that any attempt to mandate use of rehabilitative services is counter-productive and in certain situations could result in misallocation of treatment resources.

11. Two comments objected to changing from mandatory to suggestive the language in proposed § 291.505(d)(4)(iv)(B) regarding evaluation and recording of patients' needs and readiness for vocational counseling, education, and employment. The comments stated that without such evaluations, appropriate treatment plans cannot be developed and updated.

The agencies agree that a patient's needs for education, vocational rehabilitation, and employment need to be considered in preparing and updating a treatment plan. However, the agencies recognize that these needs vary on a case-by-case basis and want to ensure that this requirement is not perceived as a significant paperwork burden. If a particular patient's circumstance does not warrant certain rehabilitative services a simple notation will satisfy the assessment requirement. For example, if a patient is gainfully employed a note of that fact would suffice for the initial employment assessment. The agencies also believe that describing the contents of the initial treatment plan in two separate paragraphs in the regulation may be confusing. Accordingly, the agencies are deleting proposed paragraph (d)(4)(iv)(B), redesignating proposed paragraph (d)(4)(iv)(A) as paragraph (d)(4)(iv), and amending paragraph (d)(3)(iv)(A)(*1*) to remove any ambiguities that may exist.

12. One comment stated that the word "physician" is used in the proposed regulation in contexts that often imply physician responsibility for counseling and other nonmedical functions. The comment suggested that appropriate language be used in the regulation to delineate clearly the areas of responsibility for physicians, counseling directors, and counselors.

The purpose of this regulation, as described by the statute, is to develop "appropriate methods of professional practice in the *medical* treatment of * * * narcotic addiction" (emphasis added). (Section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. 91–513.) Narcotic drug addiction is a condition with physiological, psychological, and other behavioral aspects. The physician bears primary responsibility for the medical treatment of this condition in his or her patient. Counseling and rehabilitative services are component parts of the medical treatment and are generally necessary for the most effective treatment of narcotic addiction. Although these services are normally provided by health-care professionals, a physician may not ignore these areas of treatment nor divest himself or herself of responsibility for them. The agencies believe that it would be a mistake to conceive of this treatment as being somehow divisible into drug therapy for which the physician is responsible and other areas of treatment for which other individuals have exclusive responsibility. Therefore, the agencies feel that any changes from the proposed regulation in this area would be inappropriate.

13. Two comments stated that proposed § 291.505(d)(3)(v)(D) did not include the revision to the current requirements as discussed in comment 8 in the preamble to the proposal; i.e., that rehabilitation services would be discretionary for patients who are not ready for such services or who show substantial progress in rehabilitation based upon the discretion of the

program's physician. The comments recommended that this revision be clearly stated in the regulation.

The general requirement that counseling and rehabilitative services be made available to all patients, but that programs not be required to provide every patient with a set minimum amount of counseling or rehabilitative services, is contained in several places in the methadone regulation. (See § 291.505 (b)(2)(iii), (d)(3)(iv)(B), (d)(4)(i)(A), and (d)(4)(iv) of the final rule.) The agencies believe that these provisions sufficiently delineate the requirement.

Pregnant Patients

14. Several comments addressed the proposed provisions on prenatal care (see § 291.505(d) (1)(iii)(B) and (4)(i)(A) of the proposed regulation). One comment noted inconsistent terminology between these provisions and asked if a treatment program is required to establish a system for "informing" or for "referring" a pregnant patient to outside prenatal services. Another comment recommended that the prenatal care provision under proposed § 291.505(d)(1)(iii)(B)(*2*) be revised to state that a treatment program is responsible for coordinating prenatal care whether it is provided directly or by referral to outside prenatal services.

FDA and NIDA do not see any inconsistency between "informing that patients of publicly or privately funded prenatal care opportunities available" and "referring" a patient to those prenatal care providers. A referral in normal medical practice entails the practitioner giving his or her patient the name of a second practitioner who is able to provide desired services. Coordination of prenatal care is provided for in § 291.505 (d)(1)(iii)(B)(*3*) and (d)(4)(i)(B) of the final rule.

15. One comment recommended that the proposed requirement under § 291.505(d)(4)(iii) retain the former requirement (see 21 CFR 291.505(d)(6)(iii)(*c*) of the former regulation) that the admitting program physician date and sign the comments and evaluations made by the health-care professional in a pregnant patient's record within 72 hours of administration of the initial methadone dose.

This former requirement was inadvertently omitted from the proposed rule. Accordingly, § 291.505(d)(1)(iii)(B) of the final rule requires that the physician review, sign, and date records made by a health-care professional within 72 hours of the administration of the initial dose of methadone given a pregnant patient. This makes the regulation consistent with other special categories of patients (see § 291.505(d)(1)(iii) (A) and (C) of the final rule) and provides protection for the health of pregnant patients.

In addition, the informational requirement to explain the possible risks of a narcotic drug administered or dispensed by the program to a pregnant woman and her unborn child under § 291.505(d) (1)(iii)(B)(*5*) and (4)(i)(B)(*3*) has been revised to also include a requirement to explain the possible risks from continued used of illicit drugs and of withdrawal from the narcotic drug administered or dispensed by the program. This amendment makes the regulation more closely consistent with the informational statement for female patients of child-bearing age contained in Form FDA–2635 "Consent to Methadone Treatment."

16. One comment contended that the health care needs of female patients are not adequately addressed in the proposed rule. The comment suggested that a system for screening for pregnancy be established so that prenatal services can be provided to female patients as early as possible. This comment also suggested that (1) addicted pregnant women be given the highest priority in admission to both drug treatment programs and prenatal care programs; (2) the initial medical evaluation include a Pap test and tests for sexually transmitted diseases, namely syphilis, gonorrhea, and chlamydia; and (3) the physical examination be given annually for long-term female patients.

The agencies do not agree with the basic premise of this comment. This final rule specifies minimum requirements specifically tailored to the needs of female patients in general and pregnant patients in particular, and its companion guidance document now covers many of the specific points raised in this comment. For example, the final regulation requires the serological test for syphilis, while the guidance document recommends a Pap test and pregnancy testing, where appropriate. The guidance document also states that other tests should be given as clinically indicated. Although this regulation does delineate appropriate minimum standards for the medical treatment of narcotic addiction, it is not intended to set general standards of care for the medical profession for specific classes of patients. That is left to State governments, which regulate medical practices, noting standards developed by the profession and stated by professional societies.

17. One comment recommended that the provisions in the regulation regarding pregnant patients be revised to reflect a recent World Health Organization methadone study group's opinion that pregnant patients be withdrawn from methadone in the weeks prior to birth so that the infant does not go into sudden withdrawal shortly after birth. This comment also stated that the proposed rule provides no guidance regarding methadone patients who are nursing mothers.

The agencies are unable to evaluate this comment properly because it did not provide either a citation for or a copy of the study referred to in the comment. Requests made by FDA to the commentor for more information on the study were unsuccessful. Because there is no evidence to support requiring detoxification in this instance, FDA and NIDA cannot respond to this comment, except to note that FDA Form FDA–2635 "Consent to Methadone Treatment" advises mothers not to nurse their babies while taking methadone.

Admission and Readmission Requirements

18. One comment objected to the proposed provision in §291.505(d)(*7*)(ii) and (d)(8)(ii) requiring a 7-day waiting period between concluding a short-term or long-term detoxification episode and beginning another. The comment stated that this requirement could increase the likelihood of a patient returning to illicit drug use during this waiting period with the concomitant risk of HIV infection. The comment recommended that detoxification treatment be extended if it is determined to be necessary in the judgment of the program physician.

The regulation as written affords clinicians the flexibility necessary to adapt repeated detoxification treatment to a particular patient's needs. At the same time, it establishes a minimum standard to preclude removing all the incentive to succeed in detoxification treatment that a waiting period of less than a week would involve. Further, the agencies believe that to allow programs to offer and unlimited number of detoxification attempts with no break between attempts would result in detoxification treatment being indistinguishable from maintenance treatment. However, programs are free to offer treatment, which medically might be considered detoxification treatment but legally would be defined as maintenance treatment, as long as the patient meets the maintenance treatment criteria. An example of that situation would be a "detoxification" treatment lasting 1 year, which under the statute and under the regulation would be considered maintenance treatment. The agencies recommend that

a patient who requires continuous and repeated detoxification should be given a treatment plan that meets the requirements of maintenance treatment.

19. Several comments stated that the maintenance treatment admission criteria under proposed § 291.505(d)(1)(i)(A) regarding a person's history of addiction and current physiologic dependence are overly restrictive. One comment suggested that any physiologically dependent person who is not suitable for detoxification treatment may be admitted to maintenance treatment. Another comment suggested that any person with a long history of heroin addiction and/or methadone treatment be allowed into maintenance treatment without a showing of current physiological dependency. The comments expressed concerns that overly restrictive admission criteria could possibly force persons to continue to seek illegal drugs for a period of time to be eligible for admission into maintenance treatment.

The agencies do not agree that the admission criteria are too strict. The minimum standards for maintenance treatment admission (including the 1-year history and current dependence requirements) and the exceptions to the minimum admission criteria taken together are flexible enough not to unduly restrict a physician's clinical judgment. The agencies advise that individuals who do not meet the 1-year history requirement should not be presumed to be incapable of attaining a drug-free state in a relatively short period of time. The self-destructive behavior patterns that characterize the narcotic addict's life have not been reinforced to the same degree as in a patient who has a 1-year history of dependence. Long-term and short-term detoxification are available to patients without a history of 1-year physiological dependence. In addition, FDA and NIDA strongly disagree with the suggestion that current physiological dependence should not be a prerequisite for methadone treatment. In the setting of drug abuse treatment, it would be highly inappropriate to place an individual who is not currently physiologically dependent on a course of drug therapy that could easily lead to that individual becoming physiologically dependent on methadone.

20. One comment recommended that the final rule make eligible for maintenance treatment only persons who have had at least two documented attempts at short-term detoxification or drug-free treatment. Another comment expressed a similar, but less specific, recommendation that all persons be able to document previous drug-free treatment initiatives to be eligible for maintenance treatment.

The regulation does not preclude a program from requiring these attempts for patients who satisfy the minimum standards for admission to maintenance treatment but who would benefit more from other kinds of treatment. Thus, for patients who could detoxify easily and patients who are not truly addicted, treatment other than maintenance treatment may and should be employed. While FDA and NIDA agree that detoxification or drug-free treatment is generally preferable to maintenance treatment, the agencies cannot state that detoxification or drug-free treatment is for all patients and that maintenance treatment should only be considered a fallback treatment in all cases. Some patients may not be suitable for detoxification or drug-free treatment. Such a patient may require medical treatment and vocational and educational assistance in order to become a more highly motivated patient for whom any treatment has the highest probability of success. FDA and NIDA are unable to conclude that maintenance treatment is never an appropriate first-line treatment.

21. One comment stated that the proposed 2-year interval before a patient in maintenance treatment could have his or her clinic attendance for observation decreased from 3 days to 2 days is excessive. The comment recommended that the program physician should be allowed more discretion in determining the clinic attendance schedule.

FDA and NIDA must be concerned about problems of drug diversion as well as the effective medical treatment of drug addiction. While the agencies recognize that a burden is being placed on a patient who cannot obtain additional take-home privileges, that burden is outweighed by the decrease in the opportunity for diversion. In extraordinary circumstances, programs may ask for an exemption from the required clinic attendance schedule for a patient (see § 291.505(d)(11) of the final rule).

22. One comment observed that the proposed rule makes no specific provision for official holidays and recommended that all patients be allowed one take-home dose of medication on official Federal and State holidays.

FDA and NIDA agree with the basic principles of this comment and have implemented it in § 291.505(d)(6)(vii) of the final rule. The new provision is limited to State holidays, based on the presumption that a significant number of program employees are State or municipal employees, and would normally be entitled to a day off on State holidays. Federal holidays were not included in the regulation because they could permit programs to be closed for two observances of the same holiday. However, programs which would normally close on a Federal holiday could apply for an exemption under § 291.505(d)(11) of the final rule.

Receipt of Narcotic Drugs

23. One comment objected to proposed § 291.505(j)(3), which would permit only a licensed practitioner employed at the facility receiving shipment to accept delivery of narcotic drugs for narcotic addiction treatment. The comment recommended that the requirement also include the program pharmacist because he or she will be the ultimate custodian.

FDA and NIDA agree with this comment and have incorporated the recommendation in § 291.505(j)(3) of the final rule.

Detoxification Treatment

24. The agencies' proposed revision to provide for short-term and long-term detoxification treatment under § 291.505(d) (7) and (8) was uniformly commented upon favorably. However, several comments expressed concerns about how the availability of public funding could affect which detoxification treatment program a patient would be assigned to. One comment stated that no criteria were given to govern admission to either detoxification program.

FDA and NIDA do not have the authority to prescribe the allocation of resources to individual programs. In addition, the agencies have not established any differential admission criteria for short-term or long-term detoxification treatment because the decision as to the treatment course must be left to the clinical judgment of the treating program physician.

Methadone Dosage Levels

25. One comment recommended that the medical director approve those patients who are to receive daily doses of methadone greater than 100 milligrams. This comment stated that a requirement for a de facto second opinion would be advisable because a possibility of overdosage exists if methadone is taken in conjunction with illicit drugs.

The agencies believe that the provisions of § 291.505(d)(6)(i)(A) of the final rule, which allow only a 30-

milligram initial dose and a total dose of not more than 40 milligrams the first day (unless the medical director documents the need for a larger dose), provide adequate protection against overdosage. FDA and NIDA also believe that the provision of § 291.505(d)(6)(i)(C) of the final rule, which requires a physician to justify in the patient's record a daily dose of over 100 milligrams, provides adequate protection against overdosage, while at the same time requiring only minimal interference with the professional judgment of the physician.

26. Several comments opposed the proposed requirement under § 291.505(d)(6)(v)(D) that each patient whose daily dose of methadone is above 100 milligrams be required to take the drug under observation at least 6 days a week irrespective of the length of time in treatment, unless the program has received prior approval from the State authority and FDA. The comment stated that there is no medical justification for the requirement and that it interferes with the professional judgment of the program physician.

Daily doses of over 100 milligrams present a high risk of diversion. A patient may take only a portion of his or her prescribed dose, leaving what methadone remains to be sold on the illicit drug market. Alternatively, a patient who is diverting all of his or her 100-milligram dose would be placing that much more methadone on the illicit drug market until the diversion is detected and stopped. The agencies believe that, in this case, concerns about the possibility of diversion must outweigh concerns about infringing on the clinical judgment of the program's physician. FDA and NIDA are aware that some patients are taking other medication that reduces the blood concentration of methadone to a degree sufficient to produce withdrawal symptoms which may necessitate methadone doses above 100 milligrams. The agencies believe that this situation is not common enough, at this time, to provide a specific provision dealing with this situation in the regulation. Such cases may be handled individually under the provisions of § 291.505(d)(6)(v)(D) of the final rule.

Laboratory Examinations

27. A large number of comments mentioned the existence of the HIV epidemic and the need for strengthening treatment programs that will reduce intravenous drug abuse. These comments suggested that narcotic treatment programs be required to conduct HIV testing of patients and provide appropriate counseling services at the narcotic treatment program or by referral to appropriate health-care providers.

The agencies are actively considering this point and, elsewhere in this issue of the **Federal Register**, are proposing to require that HIV counseling be provided to patients entering treatment programs and are soliciting comments on the issue of HIV testing. Comments on the potential impact of mandatory HIV testing on a patient's willingness to enter treatment, cost, availability, frequency of testing, and what treatment decisions may be made based on the results of HIV testing would be particularly welcome.

Treatment of Patients Under 18 Years of Age

28. One comment recommended retention of the former requirement (see § 291.505(d)(3)(iv) of the former regulation) that a treatment program obtain prior approval by FDA and the State methadone authority to place a person under 16 years of age on maintenance treatment. The comment said that the effects of the extended use of methadone on a youth's physiological and psychological development are unknown.

FDA and NIDA do not disagree with the comment's assertion regarding the unknown effects of the extended use of methadone in younger patients. Indeed, the final regulation has retained all the former limitations regarding maintenance treatment of patients under 18 years of age (see § 291.505(d)(1)(iv) of the final rule). However, FDA and NIDA consider the cited provisions for patients under 16 years of age as unnecessary because they are already included under the limitations for patients under 18 years of age. The agencies believe that the limitations regarding maintenance treatment for younger patients in the final rule coupled with the additional requirement for a parent, legal guardian, or responsible adult designated by the State authority to complete and sign a consent form prior to admission of a person under 18 years of age into maintenance treatment are adequate safeguards to preclude indiscriminate admission of younger patients to maintenance treatment.

Treatment Plans

29. One comment stated that the proposed requirement under § 291.505(d)(8)(i)(F) for monthly periodic treatment plan evaluations for long-term detoxification patients is unnecessary and recommended that an initial treatment plan with periodic treatment plan evaluations occurring as needed would be sufficient.

FDA and NIDA do not agree. Because detoxification patients are at a greater risk of reverting to illicit narcotic use, the agencies believe it necessary to require, at a minimum, monthly periodic treatment plan evaluations so that the program physician can closely monitor and reassess such patient's progress in detoxification and can implement alternate treatment strategies if needed.

30. One comment suggested that jail programs and jail dispensing units should be considered for incorporation into the regulation.

Jail programs and jail dispensing units are governed by this regulation. FDA's and NIDA's experience with jail programs indicates that this regulation and use of the exemption provided in § 291.505(d)(11) of the final rule to relax or eliminate provisions not applicable in a particular penal or detention setting provides a successful regulatory scheme for jail programs.

Health-Care Professionals

31. One comment recommended the retention of the former provision requiring that, if a physician is not available, on site, to review the initial evaluation of the patient made by a health-care professional and the physician's review is performed over the telephone, the physician sign the evaluation within 72 hours of the telephone procedure. (See 21 CFR 291.505(d)(6)(iii)(*c*) of the former regulation.) The comment stated that health-care professionals are often not properly utilized by treatment programs and oral orders from physicians are not being properly documented.

FDA and NIDA do not agree with this recommendation. The agencies do not believe that the regulation should outline or elaborate on the use of health-care professionals and the recording of oral orders by a program physician. As now stated under § 291.505(d)(4)(iii) of the final rule, licensed or certified health-care professionals in accordance with Federal, State, and local law are not prohibited from performing certain functions (e.g., administering or dispensing certain medications on a physician's oral order) delegated to them by the medical director, and records are required to be properly countersigned by the medical director or licensed physician. Further elaboration on this requirement will not prevent the problems cited in the comment.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has examined the regulatory impact and regulatory flexibility implications of the final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency finds that the final rule is not a major rule inasmuch as these revisions would not result in any increase in cost (significant or otherwise) to narcotic treatment programs or to the State and local authorities that would enforce the final rule. Moreover, this final rule provides treatment programs with more flexibility than exists under the current regulation and thus allows such programs alternative and presumably more cost efficient means to comply with the requirements. For these reasons, therefore, the agency has determined that the final rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the final rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

This final rule contains information collections which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Required Application for Treatment Program Dispensing Methadone for Detoxification and Maintenance

Description: FDA requires this information to assure individual program's and hospital's compliance with 21 CFR 291.505. This information will be used in evaluating programs and hospitals that apply for FDA approval under 21 CFR 291.505. The information required under § 291.505 is submitted by completing three FDA-supplied forms: FDA–2632 "Application for Approval of Use of Methadone in a Treatment Program," FDA–2633 "Medical Responsibility Statement for Use of Methadone in a Treatment Program," and FDA–2636 "Hospital Request for Methadone Detoxification Treatment." In addition, Form FDA–2635 "Consent to Methadone Treatment," a recordkeeping form, is also required by § 291.505. These forms are completed occasionally as programs apply to FDA for approval to dispense methadone, and in the case of Form FDA–2633, as new medical staff join the program. There are no periodic reporting requirements under this regulation.

Description of Respondents: State or local governments; businesses or other for-profit organizations; non-profit institutions.

Estimated Annual Reporting and Recordkeeping Burden:

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
§ 291.505(c)(4)(i) (Form FDA–2632)	65	1	2 hours	130 hours.
§ 291.505(c)(4)(ii) (Form FDA–2633)	65	1	2 hours	130 hours.
§ 291.505(f)(2)(viii) (Form FDA–2636)	40	1	10 minutes	7 hours.
Total				137 hours.

This regulation amending § 291.505 contains recordkeeping and reporting requirements that are subject to OMB approval. Comments on the content and burden of the information collection requirement would be directed to FDA's Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Allison Herron.

List of Subjects in 21 CFR Part 291

Health professions, Methadone, Reporting and recordkeeping requirements.

Therefore, under the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Narcotic Addict Treatment Act of 1974, and applicable delegations of authority thereunder, and under authority delegated to the Commissioner of Food and Drugs, Part 291 is amended as follows:

PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

1. The authority citation for 21 CFR Part 291 is revised to read as follows and the authority citations following all of the sections in Part 291 are removed:

Authority: Secs. 3, 505, 701(a) (21 U.S.C. 823(g), 355, 371(a)); secs. 4, 548 (42 U.S.C. 257a, 290ee–3).

2. Section 291.505 is revised to read as follows:

§ 291.505 Conditions for the use of narcotic drugs; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts under section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

(a) *Definitions.* As used in this part:

(1) "Detoxification treatment" means the dispensing of a narcotic drug in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period. There are two types of detoxification treatment: short-term detoxification treatment and long-term detoxification treatment.

(i) "Short-term detoxification treatment" is for a period not in excess of 30 days.

(ii) "Long-term detoxification treatment" is for a period more than 30 days but not in excess of 180 days.

(2) "Maintenance treatment" means the dispensing of a narcotic drug in the treatment of an individual for dependence on heroin or other morphine-like drug.

(3) A "medical director" is a physician, licensed to practice medicine in the jurisdiction in which the program is located, who assumes responsibility for the administration of all medical services performed by the narcotic treatment program including ensuring that the program is in compliance with all Federal, State, and local laws and regulations regarding the medical treatment of narcotic addiction with a narcotic drug.

(4) A "medication unit" is a facility established as part of, but geographically dispersed, i.e., separate from a narcotic treatment program from which licensed private practitioners and community pharmacists—

(i) Are permitted to administer and dispense a narcotic drug, and

(ii) Are authorized to collect samples for drug testing or analysis for narcotic drugs.

(5) "Narcotic dependent" means an individual who physiologically needs heroin or a morphine-like drug to prevent the onset of signs of withdrawal.

(6) A "narcotic treatment program" is an organization (or a person, including a private physician) that administers or dispenses a narcotic drug to a narcotic addict for maintenance or detoxification treatment, provides, when appropriate or necessary, a comprehensive range of medical and rehabilitative services, is approved by the State authority and the Food and Drug Administration, and that is registered with the Drug Enforcement Administration to use a narcotic drug for the treatment of narcotic addiction.

(7) A "program sponsor" is a person (or representative of an organization) who is responsible for the operation of a narcotic treatment program and who assumes responsibility for all its employees including any practitioners, agents, or other persons providing services at the program (including its medication units).

(8) The term "services," as used in this part, includes medical evaluations, counseling, rehabilitative and other social programs (e.g., vocational and educational guidance, employment placement), which will help the patient become a productive member of society.

(9) A "State authority" is the agency designated by the Governor or other appropriate official to exercise the responsibility and authority within the State or Territory for governing the treatment of narcotic addiction with a narcotic drug.

(b) *Organizational structure and approval requirements*—

(1) *Organizational structure.* (i) A narcotic treatment program may be an independent organization or part of a centralized organization. For example, if a centralized organizational structure consists of a primary facility and other outpatient facilities, all of which conduct initial evaluation of patients and administer or dispense medication, the primary facility and each outpatient facility are separate programs, even though some services (e.g., the same hospital or rehabilitative services) are shared.

(ii) The program sponsor shall submit to the Food and Drug Administration and the State authority a description of the organizational structure of the program, the name of the persons responsible for the program, the address of the program, and the responsibilities of each facility or medication unit. The sources of funding for each program shall be listed and the name and address of each governmental agency providing funding shall be stated.

(iii) Where two or more programs share a central administration (e.g., a city or State-wide organization), the person responsible for the organization (administrator or program sponsor) is required to be listed as the program sponsor for each separate participating program. An individual program shall indicate its participation in the central organization at the time of its application. The administrator or sponsor may fulfill all recordkeeping and reporting requirements for these programs, but each program must continue to receive separate approval.

(iv) One physician may assume primary medical responsibility for more than one program and be listed as medical director. If a physician assumes medical responsibility for more than one program, a statement documenting the feasibility of the arrangement is required to be attached to the application.

(v) [Reserved]

(2)(i) *Program approval.* Before a narcotic treatment program may be lawfully operated, the program, whether an outpatient facility or a private practitioner, shall submit the applications specified in this section simultaneously to the Food and Drug Administration and the State authority and must receive the approval of both, except as provided for in paragraph (h)(5) of this section. Before granting approval, the Food and Drug Administration will consult with the Drug Enforcement Administration, Department of Justice, to ascertain if the program is in compliance with Federal controlled substances laws. Each physical location within any program is required to be identified and listed in the approval application. At the time of application for approval, the program sponsor shall indicate whether medication will be administered or dispensed at a location not previously approved for this purpose, the program is required to obtain approval from FDA and the State agency. However, no approval is necessary, but notification is required when a facility in which medication is administered or dispensed is deleted by a program. In that event, the program shall notify the Food and Drug Administration and the State authority within weeks of the deletion. Similarly, addition or deletion of facilities which provide services other than administering or dispensing medication is also permitted without approval, but notification must be made within 3 weeks to the Food and Drug Administration and the State authority about the addition and/or deletion.

(ii) *Exemption of Federal programs.* The provisions of this section requiring approval (or permitting disapproval or revocation of approval) by the State authority, compliance with requirements imposed by State law, or the submission of applications or reports required by the State authority do not apply to programs operated directly by the Veterans' Administration or any other department or agency of the United States. Federal agencies operating narcotic treatment programs have agreed to cooperate voluntarily with State agencies by granting permission on an informal basis for designated State representatives to visit Federal narcotic treatment programs and by furnishing a copy of Federal reports to the State authority, including the reports required under this section.

(iii) *Services.* Each narcotic treatment program shall provide medical and rehabilitative services and programs. (See paragraph (d)(4) of this section.) These services should normally be made available at the primary facility, but the program sponsor may enter into a formal documented agreement with private or public agencies, organizations, or institutions for these services if they are available elsewhere. The program sponsor, in any event, must be able to document that medical and rehabilitative services are fully available to patients.

(iv) *Prohibition against unapproved use of narcotic drugs.* No prescribing, administering, or dispensing of a narcotic drug for the treatment of narcotic addiction may occur without prior approval by the Food and Drug Administration and the State authority, except as provided for in paragraph (h)(5) of this section, unless specifically exempted by this section.

(v) *Approved narcotic drugs for use in treatment programs.* The following narcotic drug has been approved for use in the treatment of narcotic addiction: Methadone.

(3)(i) *Medication unit.* A program may establish a medication unit to facilitate the needs of patients who are stabilized on an optimal dosage level. To lawfully operate a medication unit, the program shall, for each separate unit, obtain approval from the Food and Drug Administration, the Drug Enforcement

Administration, and the State authority, except as provided for in paragraph (h)(5) of this section. The Food and Drug Administration, in determining whether to approve a medication unit, will consider the distribution of units within a particular geographic area. Any new medication unit is required to receive approval before it may lawfully commence operation.

(ii) *Revocation of approval.* If the Food and Drug Administration revokes the primary program's approval, the approval for any medication unit associated with the program is deemed to be automatically revoked. The Food and Drug Administration's revocation of the approval of a particular medication unit, will not, in and of itself, affect the approval of the primary program.

(iii) *Narcotic drug supply.* A medication unit must receive its supply of the narcotic drug directly from the stocks of the primary facility. Only persons permitted to administer or dispense the drug or security personnel licensed or otherwise authorized by State law to do so may deliver the drug to a medication unit.

(iv) *Referral.* (A) The patient shall be stabilized at his or her optimal dosage level before he or she may be referred to a medication unit.

(B) Since the medication unit does not provide a range of services, the program sponsor shall determine that the patient to be referred is not in need of frequent counseling, rehabilitative, and other services which are only available at the primary program facility.

(v) *Services.* A medication unit is limited to administering or dispensing a narcotic drug and collecting samples for drug testing or analysis for narcotic drugs in accordance with paragraph (d)(2) of this section. If a private practitioner wishes to provide other services besides administering or dispensing a narcotic drug and collecting samples for drug testing or analysis for narcotic drugs, he or she must submit an application for separate approval.

(vi) *Responsibility for patient.* After a patient is referred to a medication unit, the program sponsor retains continuing responsibility for the patient's care. The program sponsor shall ensure that the patient receives needed medical and rehabilitative services at the primary facility.

(c) *Conditions for approval of the use of a narcotic drug in a treatment program*—(1) *Applicants.* An individual listed as program sponsor for a treatment program using a narcotic drug need not personally be a licensed practitioner but shall employ a licensed physician for the position of medical director. Persons responsible for administering or dispensing the narcotic drug shall be practitioners as defined by section 102(21) of the Controlled Substances Act (21 U.S.C. 802(21)) and licensed to practice by the State in which the program is to be established.

(2)(i) *Assent to regulation.* A person who sponsors a narcotic treatment program, and any persons responsible for a particular program, shall agree to adhere to all the rules, directives, and procedures, set forth in this section, and any regulation regarding the use of narcotic drugs in the treatment of narcotic addiction which may be promulgated in the future. The program sponsor has responsibility for all personnel and individuals providing services, who work in the program at the primary facility or at other facilities or medication units. The program sponsors shall agree to inform all personnel and individuals providing services of the provisions of this section and to monitor their activities to assure compliance with the provisions.

(ii) The Food and Drug Administration and the State authority are required to be notified within 3 weeks of any replacement of the program sponsor or medical director. Activities in violation of this regulation may give rise to the sanctions set forth in paragraph (i) of this section.

(3) *Description of facilities.* Only program site(s) approved by Federal, State, and local authorities may treat narcotic addicts with a narcotic drug. To obtain program approval, the applicant shall demonstrate that he or she will have access to adequate physical facilities to provide all necessary services. A program must have ready access to a comprehensive range of medical and rehabilitative services so that the services may be provided when necessary. The name, address, and description of each hospital, institution, clinical laboratory, or other facility available to provide the necessary services are required to be included in the application submitted to the Food and Drug Administration and the State authority. The application is also required to include the name and address of each medication unit.

(4) *Submission of proper applications.* The following applications shall be filed simultaneously with both the Food and Drug Administration and the State authority:

(i) Form FDA–2632 "Application for Approval of Use of Methadone in a Treatment Program." This form, required by paragraph (k) of this section, shall be completed and signed by the program sponsor and submitted in duplicate to the Food and Drug Administration and the State authority.

(ii) Form FDA–2633 "Medical Responsibility Statement for Use of Methadone in a Treatment Program." This form, required by paragraph (k) of this section, shall be completed and signed by each licensed physician authorized to administer or dispense narcotic drugs and submitted in duplicate to the Food and Drug Administration and the State authority. The names of any other persons licensed by law to administer or dispense narcotic drugs working in the program shall be listed even if they are not responsible for administering or dispensing the drug at the time the application is submitted.

(5) *State and Federal approval, denial, and revocation of approval of narcotic treatment programs.* (i) The Food and Drug Administration may grant approval to a program only after FDA has received notification from both the State authority and the Drug Enforcement Administration that the program conforms to all pertinent State and Federal requirements.

(ii) The Food and Drug Administration will revoke the approval of a narcotic treatment program if so requested by the State authority or the Drug Enforcement Administration. If approval of a program is denied or revoked, the program shall have a right to appeal to the Commissioner, as provided for in paragraph (h)(5) of this section.

(iii) No shipment of a narcotic drug may lawfully be made to any program which does not have current approval from the Food and Drug Administration. Within 60 days after receipt of the application from the program sponsor for approval, the Food and Drug Administration will notify the sponsor whether the application is approved or denied.

(d)(1) *Minimum standards for admission—(i) History of addiction and current physiologic dependence.* (A) A person may be admitted as a patient for a maintenance program only if a program physician determines that the person is currently physiologically dependent upon a narcotic drug and became physiologically dependent at least 1 year before admission for maintenance treatment. A 1-year history of addiction means that an applicant for admission to a maintenance program was physiologically addicted to a narcotic at a time at least 1 year before admission to a program and was addicted, continuously or episodically, for most of the year immediately before admission to a program. In the case of a person for whom the exact date on

which physiological addiction began cannot be ascertained, the admitting program physician may, in his or her reasonable clinical judgment, admit the person to maintenance treatment, if from the evidence presented, observed, and recorded in the patient's record, it is reasonable to conclude that there was physiologic dependence at a time approximately 1 year before admission.

(B) Although daily use of a narcotic for an entire year could satisfy the regulatory definition of a 1-year history of addiction, operationally one might be physiologically dependent without daily use during the entire 1-year period and still satisfy the definition. The following, although not exhaustive, are examples of applicants who would meet the minimum standard of a 1-year history of addiction and who, if currently physiologically dependent on the date of application for admission, would be eligible for admission to a maintenance program:

(*1*) Physiologic addiction began in August 1987 and continued to the date of application for admission in August 1988.

(*2*) Physiologic addiction began in January 1986 and continued until April 1988. Physiologic addiction began again in July 1988 and continued until the application for admission in January 1989.

(*3*) Physiologic addiction began in January 1987 and continued until October 1987. The date of application for admission was January 1988, at which time the patient had been readdicted for 1 month preceding his or her admission.

(*4*) Physiologic addiction consisted of four episodes in the last year, each episode lasting 2½ months.

(C) The program physician or an appropriately trained staff member designated and supervised by the physician shall record in the patient's record the criteria used to determine the patient's current physiologic dependence and history of addiction. In the latter circumstance, the program physician shall review, date, and countersign the supervised staff member's evaluation to demonstrate his or her agreement with the evaluation. The program physician shall make the final determination concerning a patient's physiologic dependence and history of addiction. The program physician shall sign, date, and record a statement that he or she has reviewed all the documented evidence to support a 1-year history of addiction and the current physiologic dependence and that in his or her reasonable clinical judgment the patient fulfills the requirements for admission to maintenance treatment. The program physician shall complete and record the statement before the program administers any methadone to the patient.

(ii) *Voluntary participation, informed consent.* The person responsible for the program shall ensure that: A patient voluntarily chooses to participate in a program; all relevant facts concerning the use of the narcotic drug used by the program are clearly and adequately explained to the patient; all patients, with full knowledge and understanding of its contents, sign the "Consent to Methadone Treatment" Form FDA–2635 (see paragraph (k) of this section); a parent, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) sign for patients under the age of 18 the second part of Form FDA–2635 "Consent to Methadone Treatment."

(iii) *Exceptions to minimum admission criteria*—[A] *Penal or chronic care.* A person who has resided in a penal or chronic care institution for 1 month or longer may be admitted to maintenance treatment within 14 days before release or discharge, or within 6 months after release from such an institution without documented evidence to support findings of physiological dependence, provided the person would have been eligible for admission before he or she was incarcerated or institutionalized and, in the reasonable clinical judgment of a program physician, treatment is medically justified. Documented evidence of the prior residence in a penal or chronic care institution and evidence of all other findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by program personnel supervised by the admitting program physician. The admitting program physician shall date and sign these recordings or review the health-care professional's recordings before the initial dose is administered to the patient. In the latter case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional within 72 hours of administration of the initial dose to the patient.

(B) *Pregnant patients.* (*1*) Pregnant patients, regardless of age, who have had a documented narcotic dependency in the past and who may return to narcotic dependency, with all its attendant dangers during pregnancy, may be placed on a maintenance regimen. For such patients, evidence of current physiological dependence on narcotic drugs is not needed if a program physician certifies the pregnancy and, in his or her reasonable clinical judgment, finds treatment to be medically justified. Evidence of all findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by program personnel supervised by the admitting program physician. The admitting program physician shall date and sign these recordings or review the health-care professional's recordings before the initial methadone dose is administered to the patient. In the latter case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional within 72 hours of administration of the initial methadone dose to the patient. Pregnant patients are required to be given the opportunity for prenatal care either by the program or by referral to appropriate health-care providers.

(*2*) If a program cannot provide direct prenatal care for pregnant patients in treatment, the program shall establish a system for informing the patients of the publicly or privately funded prenatal care opportunities available. If there are no publicly funded prenatal referral opportunities and the program cannot provide such services or the patient cannot afford them or refuses them, then the treatment program shall, at a minimum, offer her basic prenatal instruction on maternal, physical, and dietary care as part of its counseling service.

(*3*) Counseling records and/or other appropriate patient records are required to reflect the nature of prenatal support provided by the program. If the patient is referred for prenatal services, the physician to whom she is referred is required to be notified that she is in maintenance treatment, provided that notification is in accordance with the Department of Health and Human Services' confidentiality regulations (42 CFR Part 2). If a pregnant patient refuses direct treatment or appropriate referral for treatment, the treating program physician should consider using informed consent procedures; e.g., to have the patient acknowledge in writing that she had the opportunity for this treatment but refuses it. The program physician, consistent with the confidentiality regulations, shall request the physician or the hospital to which a patient is referred to provide, following birth, a summary of the delivery and treatment outcome for the patient and offspring. If the program physician does not receive a response to the request, he or she shall document in the record that such a request was made.

(4) Within 3 months after termination of pregnancy, the program physician shall enter an evaluation of the patient's treatment state into her record and state whether she should remain in the maintenance program or be detoxified.

(5) Caution should be taken in the maintenance treatment of pregnant patients. Dosage levels should be maintained at the lowest effective dose if treatment is deemed necessary. The program sponsor shall ensure that each female patient is fully informed of the possible risks to her or to her unborn child from continued use of illicit drugs and from the use of, or withdrawal from, a narcotic drug administered or dispensed by the program in maintenance or detoxification treatment.

(C) *Previously treated patients.* Under certain circumstances a patient who has been treated and later voluntarily detoxified from maintenance treatment may be readmitted to maintenance treatment, without evidence to support findings of current physiologic dependence, up to 2 years after discharge, if the program attended is able to document prior narcotic drug maintenance treatment of 6 months or more, and the admitting program physician, in his or her reasonable clinical judgment, finds readmission to maintenance treatment to be medically justified. For patients meeting these criteria, the quantity of take-home medication will be determined in the reasonable clinical judgment of the program physician, but in no case may the quantity of take-home medication be greater than would have been allowed at the time the patient voluntarily terminated previous treatment. The admitting program physician or a program employee under supervision of the admitting program physician must enter in the patient's record documented evidence of the patient's prior treatment and evidence of all decisions and criteria used relating to the admission of the patient and the quantity of take-home medication permitted. The admitting program physician shall date and sign these entries in the patient's record or review the health-care professional's entries therein before the program administers any medication to the patient. In the latter case, the admitting program physician shall date and sign the entries in the patient's record made by the health-care professional within 72 hours of administration of the initial dose to the patient.

(iv) *Special limitation; treatment of patients under 18 years of age.* A person under 18 is required to have had two documented attempts at short-term detoxification or drug-free treatment to be eligible for maintenance treatment. A 1-week waiting period is required after such a detoxification attempt, however, before an attempt is repeated. The program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic drugs. No person under 18 years of age may be admitted to a maintenance treatment program unless a patient, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) completes and signs consent form, Form FDA–2635 "Consent to Methadone Treatment."

(v) *Denial of admission.* If in the reasonable clinical judgment of the medical director a particular patient would not benefit from treatment with a narcotic drug, the patient may be refused such treatment even if the patient meets the admission standards.

(2) *Minimum testing or analysis for drugs: Uses and frequency.* (i) The person(s) responsible for a program shall ensure that: An initial drug-screening test or analysis is completed for each prospective patient; at least eight additional random tests or analyses are performed on each patient during the first year in maintenance treatment; and at least quarterly random tests or analyses are performed on each patient in maintenance treatment for each subsequent year, except that a random test or analysis is performed monthly on each patient who receives a 6-day supply of take-home medication. When a sample is collected from each patient for such test or analysis, it must be done in a manner that minimizes opportunity for falsification. Each test or analysis must be analyzed for opiates, methadone, amphetamines, cocaine, and barbiturates. In addition, if any other drug or drugs have been determined by a program to be abused in that program's locality, or as otherwise indicated, each test or analysis must be analyzed for any of those drugs as well. Any laboratory that performs the testing required under this regulation shall be in compliance with all applicable Federal proficiency testing and licensing standards and all applicable State standards. If a program proposes to change a laboratory used for such testing or analysis, the program shall have the change approved by the Food and Drug Administration.

(ii) The person responsible for a program shall ensure that test results are not used as the sole criterion to force a patient out of treatment but are used as a guide to change treatment approaches. The person responsible for a program shall also ensure that when test results are used, presumptive laboratory results are distinguished from results that are definitive.

(3) *Patient evaluation; minimum admission and periodic requirements—* (i) *Minimum contents of medical evaluation.* Each patient is required to have a medical evaluation by a program physician or an authorized health-care professional under the supervision of a program physician on admission to a program. At a minimum, this evaluation is required to consist of a medical history which includes the required history of narcotic dependence, evidence of current physiologic dependence unless excepted by the regulations, and a physical examination, and includes the following laboratory examinations: serological test for syphilis, a tuberculin skin test, and a test or analysis for drug determination. If in the reasonable clinical judgment of the program physician, a patient's subcutaneous veins are severely damaged to the extent that a blood specimen cannot be obtained, the serological test for syphilis may be omitted. The physical examination is required to consist of an investigation of the organ systems for possibilities of infectious disease, pulmonary, liver, and cardiac abnormalities, and dermatologic sequelae of addiction. In addition, the physical examination is required to include a determination of the patient's vital signs (temperature, pulse, and blood pressure and respiratory rate); an examination of the patient's general appearance, head, ears, eyes, nose, throat (thyroid), chest (including heart, lungs, and breasts), abdomen, extremities, skin, and neurological assessment; and the program physician's overall impression of the patient.

(ii) *Recordings of findings.* The admitting program physician or an appropriately trained health care professional supervised by the admitting program physician shall record in the patient's record all findings from the admission medical evaluation. In each case the admitting program physician shall date and sign these entries, or date, review, and countersign these recordings in the patient's record to signify his or her review of and concurrence with the history and physical findings.

(iii) *Admission evaluation.* (A) Each patient seeking admission or readmission for treatment services is required to be interviewed by a well-trained program counselor, qualified by virtue of education, training, or

experience to assess the psychological and sociological background of drug abusers, to determine the appropriate treatment plan for the patient. To determine the most appropriate treatment plan for a patient, the interviewer shall obtain and document in the patient's record the patient's history.

(B) A patient's history includes information relating to his or her educational and vocational achievements. If a patient has no such history; i.e., he or she has no formal education or has never had an occupation, this requirement is met by writing this information in the patient's history.

(iv) *Initial treatment plan.* (A)(*1*) The initial treatment plan is required to contain a statement that outlines realistic short-term treatment goals which are mutually acceptable to the patient and the program. The initial treatment plan is also required to spell out the behavioral tasks a patient must perform to complete each short-term goal; the patient's requirements for education, vocational rehabilitation, and employment; and the medical, psychosocial, economic, legal, or other supportive services that a patient needs. The plan is also required to identify the frequency with which these services are likely to be provided. Prior to developing a treatment plan, the patient's needs for medical, social, and psychological services; education; vocational rehabilitation; and employment must be assessed, and the needs reflected, when clinically appropriate, in the treatment plan.

(*2*) A primary counselor is one who is assigned by the program to develop, implement, and evaluate the patient's initial and periodic treatment plan and to monitor a patient's progress in treatment. The primary counselor shall enter in the patient's record the counselor's name, the contents of a patient's initial assessment, and the initial treatment plan. The primary counselor shall make these entries immediately after the patient is stabilized on a dose or within 4 weeks after admission, whichever is sooner.

(B) It is recognized that patients need varying degrees of treatment and rehabilitative services which are often dependent on or limited by a number of variables; e.g., patient resources, available program, and community services. It is not the intent of this regulation to prescribe a particular treatment and rehabilitative service or the frequency at which a service should be offered.

(C) The program supervisory counselor or other appropriate program personnel so designated by the program physician shall review and countersign all the information and findings required to be recorded in each patient's record under paragraph (d)(3)(iv) of this section.

(v) *Periodic treatment plan evaluation.* (A) The program physician or the primary counselor shall review, reevaluate, and alter where necessary each patient's treatment plan at least once each 90 days during the first year of treatment, and then at least twice a year after the first year of continuous treatment.

(B) The program physician shall ensure that the periodic treatment plan becomes part of each patient's record and that it is signed and dated in the patient's record by the primary counselor and is countersigned and dated by the supervisory counselor.

(C) At least once a year, the program physician shall date, review, and countersign the treatment plan recorded in each patient's record and ensure that each patient's progress or lack of progress in achieving the treatment goals is entered in the patient's record by the primary counselor. When appropriate, the treatment plan and progress notes should deal with the patient's mental and physical problems, apart from drug abuse. The treatment plan is required to include the name of and the reasons for prescribing any medication for emotional or physical problems.

(D) The requirement for annual physician review and signature by the program physician in paragraph (d)(3)(v)(C) of this section is discretionary, however, as it applies to a patient who has satisfactorily adhered to program rules for at least 3 consecutive years from his or her entrance into the maintenance treatment program and who has made substantial progress in rehabilitation.

(4) *Minimum program services*—(i)(A) *Access to a range of services.* A treatment program shall provide a comprehensive range of medical and rehabilitative services to its patients especially during the first 3 years of treatment.

(B) *Pregnant patients.* (*1*) For pregnant patients in a treatment program who were not admitted under paragraph (d)(1)(iii)(B) of this section, a treatment program shall give them the opportunity for prenatal care either by the narcotic treatment program or by referral to appropriate health care providers. If a program cannot provide direct prenatal care for pregnant patients in treatment, it shall establish a system of referring them for prenatal care which may be either publicly or privately funded. If there is no publicly funded prenatal care available to which a patient may be referred, and the program cannot provide such services, or the patient cannot afford or refuses prenatal care services, then the treatment program shall, at a minimum, offer her basic prenatal instruction on maternal, physical, and dietary care as a part of its counseling service.

(*2*) Counseling records and other appropriate patient records are required to reflect the nature of prenatal support provided by the program. If the program refers a patient for prenatal services, it shall inform the physician to whom she is referred that the patient is in maintenance treatment, provided such notification is in accordance with the Department of Health and Human Services' confidentiality regulations (42 CFR Part 2). If a pregnant patient refuses direct prenatal services or appropriate referral for prenatal services, the treating program physician should consider using informed consent procedures; i.e., to have the patient acknowledge in writing that she has the opportunity for this treatment but refuses it. The program physician shall request the physician or the hospital to which a patient is referred to provide, following birth, a summary of the delivery and treatment outcome for the patient and offspring. The information should be obtained in accordance with the Department of Health and Human Services' confidentiality regulations (42 CFR Part 2). If no response is received, the program physician shall document in the record that such a request was made and no response was received.

(*3*) Caution should be taken in the maintenance treatment of pregnant patients. Dosage levels should be maintained at the lowest effective dose if continued treatment is deemed necessary. It is the responsibility of the program sponsor to ensure that each female patient is fully informed of the possible risks to a pregnant woman and her unborn child from continued use of illicit drugs and from the use of, or withdrawal from, a narcotic drug administered or dispensed by the program in maintenance or detoxification treatment.

(C) [Reserved]

(D) *Off-site services.* Any service not furnished at the primary facility is required to be listed in any application for approval submitted to the Food and Drug Administration or to the State authority. The addition, modification, or deletion of any program service is required to be reported immediately to the Food and Drug Administration.

(ii) *Minimum medical services; designation of medical director and responsibilities.* Each program shall have a designated medical director who assumes responsibility for administering all medical services performed by the program. The medical director and other authorized program physicians are required to be licensed to practice medicine in the jurisdiction in which the program is located. The medical director is responsible for ensuring that the program is in compliance with all Federal, State, and local laws and regulations regarding medical treatment of narcotic addiction. In addition, the medical director or other authorized physicians shall:

(A) Ensure that evidence of current physiologic dependence, length of history of addiction, or exceptions to criteria for admission are documented in the patient's record before the patient receives the initial dose.

(B) Ensure that a medical evaluation including a medical history has been taken, and physical examination has been done before the patient receives the initial dose (except that in an emergency situation, the initial dose may be given before the physical examination).

(C) Ensure that appropriate laboratory studies have been performed and reviewed.

(D) Sign or countersign all medical orders as required by Federal or State law. (Such medical orders include but are not limited to the initial medication orders and all subsequent medication order changes, all changes in the frequency of take-home medication, and prescribing additional take-home medication for an emergency situation.)

(E) Review and countersign treatment plans at least annually as qualified by paragraph (d)(3)(v)(D) of this section.

(F) Ensure that justification is recorded in the patient's record for reducing the frequency of clinic visits for observed drug ingesting, providing additional take-home medication under exceptional circumstances or when there is physicial disability, or prescribing any medication for physical or emotional problems.

(iii) *Use of health-care professionals.* Although the final decision to accept a patient for treatment may be made only by the medical director or other designated program physician, it is recognized that physicians can train program personnel to detect and document narcotic abstinence symptons and that some jurisdictions allow State-licensed or certified health-care professionals; e.g., physician's assistants, nurse practitioners, to perform certain functions—record medical histories, perform physicial examinations, and prescribe, administer, or dispense certain medications—that are ordinarily performed by a licensed physician. These regulations do not prohibit licensed or certified health-care professionals from performing those functions in narcotic treatment programs if it is authorized by Federal, State, and local laws and regulations, and if those functions are delegated to them by the medical director, and records are properly countersigned by the medical director or a licensed physician.

(iv) *Vocational rehabilitation, education, and employment.* Each program shall provide opportunities directly, or through referral to community resources, for patients who either desire or have been deemed by the program staff to be ready to participate in educational job training programs or to obtain gainful employment as soon as possible.

(5) *Staffing patterns*—(i) *Program personnel.* The person(s) responsible for a program shall determine program personnel requirements after considering the number of patients who are vocationally and educationally impaired; the number of patients with significant psychopathology; the number of patients who are also nonnarcotic drug or alcohol abusers; the number of patients with behavioral problems in the program; and the number of patients with serious medical problems.

(ii) *Supportive services.* The person(s) responsible for the program shall take notice, when considering the staffing pattern, that maintenance treatment programs need to establish supportive services in accordance with the varying characteristics and needs of their patient populations. The person(s) responsible for a program shall also take notice of the availability of existing community resources which may complement or enhance the program's delivery of supportive services and then establish a staffing pattern based on a combination of patient needs and available, accessible community resources.

(6) *Frequency of attendance; quantity of take-home medication; dosage of methadone; initial and stabilization—(i) Dosage and responsibility for administration.* (A) The person(s) responsible for the program shall ensure that the initial dose of methadone does not exceed 30 milligrams and that the total dose for the first day does not exceed 40 milligrams, unless the program medical director documents in the patient's record that 40 milligrams did not suppress opiate abstinence symptoms.

(B) A licensed physician shall assume responsibility for the amount of the narcotic drug administered or dispensed and shall record, date, and sign in each patient's record each change in the dosage schedule.

(C) The administering licensed physician shall ensure that a daily dose greater than 100 milligrams is justified in the patient's record.

(ii) *Authorized dispensers of narcotic drugs; responsibility.* A narcotic drug may be administered or dispensed only by a practitioner licensed under the apporpriate State law and registered under the appropriate State and Federal laws to order narcotic drugs for patients, or by an agent of such a practitioner, supervised by and under the order of the practitioner. This agent is required to be a pharmacist, registered nurse, or licensed practical nurse, or any other health care professional authorized by federal and State law to administer or dispense narcotic drugs. The licensed practitioner assumes responsibility for the amounts of narcotic drugs administered or dispensed and shall record and countersign all changes in dosage schedule.

(iii) *Form.* Methadone may be administered or dispensed in oral form only when used in a treatment program. Hospitalized patients under care for a medical or surgical condition are permitted to receive methadone in parenteral form when the attending physician judges it advisable. Although tablet, syrup concentrate, or other formulations may be distributed to the program, all oral medication is required to be administered or dispensed in a liquid formulation. The oral dosage form is required to be formulated in such a way as to reduce its potential for parenteral abuse. Take-home medication is required to be labeled with the treatment center's name, address, and telephone number and must be packaged in special packaging as required by 16 CFR 1700.14 in accordance with the Poison Prevention Packaging Act (Pub. L. 91–601, 15 U.S.C. 1471 *et seq.*) to reduce the chances of accidental ingestion. Exceptions may be granted when these provisions conflict with State law with regard to the administering or dispensing of drugs.

(iv) *Take-home medication.* (A) Take-home medication may be given only to a patient who, in the reasonable clinical judgment of the program physician, is responsible in handling narcotic drugs. Before the program physician reduces the frequency of a patient's clinical visits, she or he or a designated staff member shall record the rationale for the decision in the patient's clinical

record. If this is done by a designated staff member, a program physician shall review, countersign, and date the patient's record where this information is recorded.

(B) The program physician shall consider the following in determining whether, in his or her reasonable clinical judgment, a patient is responsible in handling narcotic drugs:

(*1*) Absence of recent abuse of drugs (narcotic or nonnarcotic), including alcohol;

(*2*) Regularity of clinic attendance;

(*3*) Absence of serious behavioral problems at the clinic;

(*4*) Absence of known recent criminal activity, e.g., drug dealing;

(*5*) Stability of the patient's home environment and social relationships;

(*6*) Length of time in maintenance treatment;

(*7*) Assurance that take-home medication can be safely stored within the patient's home; and

(*8*) Whether the rehabilitative benefit to the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion.

(v) *Take-home requirements.* The requirement of time in treatment is a minimum reference point after which a patient may be eligible for take-home privileges. The time reference is not intended to mean that a patient in treatment for a particular time has a specific right to take-home medication. Thus, regardless of time in treatment, a program physician may, in his or her reasonable judgment, deny or rescind the take-home medication privileges of a patient.

(A)(*1*) In maintenance treatment it is required that a patient come to the clinic for observation daily or at least 6 days a week. If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily adhered to program rules for at least 3 months, has made substantial progress in rehabilitation and responsibility in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section, and would improve his or her rehabilitative progress by decreasing the frequency of attendance at the clinic for observation, the patient may be permitted to reduce his or her attendance at the clinic for observation to three times weekly. The patient may receive no more than a 2-day take-home supply of medication.

(*2*) If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily ahered to program rules for at least 2 years from his or her entrance into the program, has made substantial progress in rehabilitation and responsibility in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section), and would improve his or her rehabilitative progress by decreasing the frequency of attendance at the clinic for observation, the patient may be permitted to reduce his or her clinic attendance at the clinic for observation to twice weekly. Such a patient may receive no more than a 3-day take-home supply of medication.

(*3*) If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily adhered to program rules for at least 3 consecutive years from his or her entrance into the maintenance treatment program, has made substantial progress in rehabilitation, has no major behavioral problems, is responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section), and would improve his or her rehabilitative progress by decreasing the frequency of his or her clinic attendance for observation, the patient may be permitted to reduce clinic attendance for observation to once weekly, provided that the following additional criteria are met: The program physician has written into the patient's record an evaluation that the patient is responsible in handling narcotic drugs (paragraphs (d)(6)(iv)(B)(*1*) through (*8*) of this section); the patient is employed (or actively seeking employment), attends school, is a homemaker, or is considered unemployable for mental or physical reasons by a program physician; the patient is not known to have abused drugs including alcohol in the last year; and the patient is not known to have engaged in criminal activity; e.g., drug dealing, in the last year. A patient permitted to reduce clinic attendance for observation to once weekly may receive no more than a 6-day take-home supply of medication.

(B)(*1*) If a patient, after receiving a supply of take-home medication, is inexcusably absent from or misses a scheduled appointment with a treatment program without authorization from the program staff, the program physician shall increase the frequency of the patient's clinic attendance for drug ingestion under observation. For such a patient, the program physician shall not reduce the frequency of the patient's clinic attendance for drug ingestion under observation until she or he has had at least three consecutive monthly tests or analyses that are neither positive for morphine-like drugs (except from the narcotic drug administered or dispensed by the program) or other drugs of abuse, nor negative for the narcotic drug administered or dispensed by the program, and until she or he is again determined by a program physician to be responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section) and to meet criteria in paragraph (d)(6)(v)(A) of this section.

(*2*) If a patient, after receiving a 6-day supply of take-home medication, has a test or analysis which is confirmed to be positive for morphine-like drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse, or negative for the narcotic drug administered or dispensed by the program, the program physician shall place the patient on probation for 3 months. If, during this probation, the patient has a test or analysis either positive for morphine-like drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse, or negative for the narcotic drug administered or dispensed by the program, the program physician shall increase the frequency of the patient's clinic attendance for observation to at least twice weekly. Such a patient may receive no more than a 3-day take-home supply of medication until she or he has had at least three consecutive monthly tests or analyses which are neither positive for morphine-like drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse, nor negative for the narcotic drug administered or dispensed by the program, and the program physician again determines that the patient is responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B)(*1*) through (*8*) of this section) and meets the criteria contained in paragraph (d)(6)(v)(A) of this section.

(C) In calculating the number of years of maintenance treatment, the period is considered to begin on the first day the medication is administered, or on readmission if a patient has had a continuous absence of 90 days or more. Cumulative time spent by the patient in more than one program is counted toward the number of years of treatment, provided there has not been a continuous absence of 90 days or more.

(D) Each patient whose daily dose is above 100 milligrams is required to be under observation while ingesting the drug at least 6 days per week irrespective of the length of time in treatment, unless the program has received prior approval from the Food and Drug Administration with the concurrence of the State authority.

(vi) *Exceptions to take-home requirements.* If, in the reasonable

clinical judgment of the program physician:

(A) A patient is found to have a physical disability which interferes with his or her ability to conform to the applicable mandatory schedule, she or he may be permitted a temporarily or permanently reduced schedule, provided she or he is also found to be responsible in handling narcotic drugs.

(B) A patient, because of exceptional circumstances such as illness, personal or family crises, travel, or other hardship, is unable to conform to the applicable mandatory schedule, she or he may be permitted a temporarily reduced schedule, provided she or he is also found to be responsible in handling narcotic drugs. The rationale for an exception to a mandatory schedule is to be based on the reasonable clinical judgment of the program physician and shall be recorded in the patient's record by the program physician or by program personnel supervised by the program physician. In the latter situation, the physician shall review, countersign, and date the patient's record where this rationale is recorded. In any event, a patient may not be given more than a 2-week supply of narcotic drugs at one time.

(vii) *Official State holidays.* If a treatment center program is not in operation due to the observance of an official State holiday, patients may be permitted one extra take-home dose per visit and one fewer clinic visit per week to allow patients not to have to attend the clinic on an official State holiday. An official State holiday is a holiday on which most State offices are usually closed and routine State government business is not conducted.

(7) [Reserved]

(8) *Minimum standards for short-term detoxification treatment.* (i) For short-term detoxification from narcotic drugs, the narcotic drug is required to be administered by the program physician or by an authorized agent of the physician, supervised by and under the order of the physician. The narcotic drug is required to be administered daily, under close observation, in reducing dosages over a period not to exceed 30 days. All requirements for maintenance treatment apply to short-term detoxification treatment with the following exceptions:

(A) Take-home medication is not allowed during short-term detoxification.

(B) A history of 1 year physiologic dependence is not required for admission to short-term detoxification.

(C) Patients who have been determined by the program physician to be currently physiologically narcotic dependent may be placed in short-term detoxification treatment, regardless of age.

(D) No test or analysis is required except for the initial drug screening test or analysis.

(E) The initial treatment plan and periodic treatment plan evaluation required for maintenance patients are not necessary for short-term detoxification patients. However, a primary counselor must be assigned by the program to monitor a patient's progress toward the goal of short-term detoxification and possible drug-free treatment referral.

(F) The requirements of paragraph (d)(4) of this section, except paragraphs (d)(4)(ii) (A) through (D) and (d)(4)(iii) of this section, do not apply to short-term detoxification treatment.

(ii) A patient is required to wait at least 7 days between concluding a short-term detoxification treatment episode and beginning another. Before a short-term detoxification attempt is repeated, the program physician shall document in the patient's record that the patient continues to be, or is again, physiologically dependent on narcotic drugs. The provisions of these requirements, except as noted in paragraph (d)(8)(i) of this section, apply to both inpatient and ambulatory short-term detoxification treatment.

(iii) Short-term detoxification treatment is not recommended for a pregnant patient.

(9) *Minimum standards for long-term detoxification treatment.* (i) For long-term detoxification from narcotic drugs, the narcotic drug is required to be administered by the program physician or by an authorized agent of the physician, supervised by and under the order of the physician. The narcotic drug is required to be administered on a regimen designed to reach a drug-free state and to make progress in rehabilitation in 180 days or less. All requirements for maintenance treatment apply to long-term detoxification treatment with the following exceptions.

(A) In long-term detoxification treatment it is required that the patient be under observation while ingesting the drug daily or at least 6 days a week, for the duration of the long-term detoxification treatment.

(B) A history of 1 year physiologic dependence is not required for admission to long-term detoxification.

(C) The program physician shall document in the patient's record that short-term detoxification is not a sufficiently long enough treatment course to provide the patient with the additional program services he or she deems necessary for the patient's rehabilitation. The program physician shall document this information in the patient's record before long-term detoxification may begin.

(D) Patients who have been determined by the program physician to be currently physiologically dependent on narcotics may be placed in long-term detoxification treatment, regardless of age.

(E) An initial drug screening test or analysis is required for each patient. And at least one additional random test or analysis must be performed monthly on each patient during long-term detoxification.

(F) The initial treatment plan and periodic treatment plan evaluation required for maintenance patients are also required for long-term detoxification patients, except that the required periodic treatment plan evaluation is required to occur monthly.

(ii) A patient is required to wait at least 7 days between concluding a long-term treatment episode and beginning another. Before a long-term detoxification attempt is repeated, the program physician shall document in the patient's record that the patient continues to be or is again physicologically dependent on narcotic drugs. The provisions of these requirements apply to both inpatient and ambulatory long-term detoxification treatment.

(iii) Long-term detoxification is not recommended for a pregnant patient.

(10) *Inspections of programs; patient confidentiality.* A program shall allow inspections by duly authorized employees of the State authority, and in accordance with Federal controlled substances laws and Federal confidentiality laws, by duly authorized employees of the Food and Drug Administration, the Drug Enforcement Administration of the Department of Justice, and the National Institute on Drug Abuse.

(11) *Exemptions from specific program standards.* (i) A program is permitted, at the time of application or any time thereafter, to request exemption from specific program standards. The rationale for an exemption shall be thoroughly documented in an appendix to be submitted with the application or at some later time. The Food and Drug Administration will approve such exemptions of program standards at the time of application, or any time thereafter, with the concurrence of the State authority. An example of a case in which an exemption might be granted would be for a private practitioner who wishes to treat a limited number of

patients in a nonmetropolitan area with few physicians and no rehabilitative services geographically accessible and requests exemption from some of the staffing and service standards.

(ii) The Food and Drug Administration has the right to withhold the granting of an exemption requested at the time of application until a program is in actual operation in order to assess if the exemption is necessary. If periodic inspections of the progam reveal that discrepancies or adverse conditions exist, the Food and Drug Administration shall reserve the right to revoke any or all exemptions previously granted.

(12) *Research.* When a program conducts research on human subjects or provides subjects for research, there must be written policies and written review to assure the rights of the patients involved. Appropriate informed consent forms are required to be signed by the patient and to be retained in his or her patient record at the program. All research, development, and related activities which involve human subjects and which are funded by grants from or contracts with the Department of Health and Human Services are required to comply with the Department of Health and Human Services' regulations on the protection of human subjects, 45 CFR Part 46, and confidentiality of information, 42 CFR Part 2. All investigational research involving human subjects conducted for submission to the Food and Drug Administration must be conducted in compliance with Part 312 of this chapter.

(13) *Patient record system*—(i) *Patient care.* The person(s) responsible for a program shall establish a record system to document and monitor patient care. This system is required to comply with all Federal and State reporting requirements relevant to methadone. All records are required to be kept confidential and in accordance with all applicable Federal and State regulations regarding confidentiality.

(ii) *Drug dispensing.* The person(s) responsible for a program shall ensure that accurate records traceable to specific patients are maintained showing dates, quantity, and batch or code marks of the drug dispensed. These records must be retained for a period of 3 years from the date of dispensing.

(iii) *Patient's record.* An adequate record must be maintained for each patient. The record is required to contain a copy of the signed consent form(s), the date of each visit, the amount of drug administered or dispensed, the results of each test or analysis for drugs, any significant physical or psychological disability, the type of rehabilitative and counseling efforts employed, an account of the patient's progress, and other relevant aspects of the treatment program. For recordkeeping purposes, if a patient misses appointments for 2 weeks or more without notifying the program, the episode of care is considered terminated and is to be so noted in the patient's record. This does not mean that the patient cannot return for care. If the patient does return for care and is accepted into the program, this is considered a readmission and is to be so noted in the patient's record. This method of recordkeeping helps assure the easy detection of sporadic attendance and decreases the possibility of administering inappropriate doses of narcotic drugs (e.g., the patient who has received no medication for several days or more and upon return receives the usual stabilization dose). An annual evaluation of the patient's progress must be entered in the patient's record.

(14) *Security of drug stocks.* adequate security is required to be maintained over drug stocks, over the manner in which it is administered or dispensed, over the manner in which it is distributed to medication units, and over the manner in which it is stored to guard against theft and diversion of the drug. The program is required to meet the security standards for the distribution and storage of controlled substances as required by the Drug Enforcement Administration, Department of Justice (21 CFR 1301.72–1301.76).

(e) *Multiple enrollments*—(1) *Administering or dispensing to patients enrolled in other programs.* There is a danger of drug dependent persons attempting to enroll in more than one narcotic treatment program to obtain quantities of drugs for the purpose of self-administration or illicit marketing. Therefore, except in an emergency situation, drugs shall not be provided to a patient who is known to be currently receiving drugs from another treatment program

(2) *Patient attendance requirements.* The patient shall always report to the same treatment facility unless prior approval is obtained from the program sponsor for treatment at another program. Permission to report for treatment at the facility of another program shall be granted only in exceptional circumstances and shall be noted on the patient's clinical record.

(f) *Conditions for use of narcotic drugs in hospitals for detoxification treatment*—(1) *Form.* The drug may be administered or dispensed in either oral or parenteral form. (See paragraph (d)(6)(iii) of this section.)

(2) *Use of narcotic drugs in hospitals*—(1) *Approved uses.* For hospitalized patients, the use of a narcotic drug for narcotic addict treatment may be administered or dispensed only for detoxification treatment. If a narcotic drug is administered for treatment of narcotic dependence for more than 180 days, the procedure is no longer considered detoxification but is, rather, considered maintenance treatment. Only approved narcotic treatment programs may undertake maintenance treatment. This does not preclude the maintenance treatment of a patient who is hospitalized for treatment of medical conditions other than addiction and who requires temporary maintenance treatment during the critical period of his or her stay or whose enrollment in a program which has approval for maintenance treatment using narcotic drugs has been verified. (See 21 CFR 1306.07(c).) Any hospital which already has received approval under this paragraph (f) may serve as a temporary narcotic treatment program when an approved treatment program has been terminated and there is no other facility immediately available in the area to provide narcotic drug treatment for the patients. The Food and Drug Administration may give this approval upon the request of the State authority or the hospital, When no State authority has been established.

(ii) *Individuals responsible for supplies.* Hospitals shall submit to the Food and Drug Administration and the State authority the name of the individual (e.g., pharmacist) responsible for receiving and securing supplies of narcotic drugs for the treatment of narcotic addicts. The individual responsible for supplies shall ensure that the only persons who receive supplies of narcotic drugs are those who are authorized to do so by Federal or State law.

(iii) *General description.* The hospital shall submit to the Food and Drug Administration and the State authority a general description of the hospital including the number of beds, specialized treatment facilities for drug dependence, and nature of patient care undertaken.

(iv) *Anticipated quantity of drug needed.* The hospital shall submit to the Food and Drug Administration and the State authority the anticipated quantity of narcotic drugs for narcotic addict treatment needed per year.

(v) *Records.* The hospital shall maintain accurate records showing dates, quantity, and batch or code marks of the drug used for inpatient treatment. The hospital shall retain the records for at least a period of 3 years.

(vi) *Inspection.* The hospital shall permit the Food and Drug Administration and the State authority to inspect supplies of the drug at the hospital and evaluate the uses to which the drug is being put. The Food and Drug Administration and the State authority will keep the identity of the patients confidential in accordance with confidentiality requirements of 42 CFR Part 2. Records on the receipt, storage, and distribution of narcotic medication are subject to inspection under Federal controlled substances laws; but use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel.

(vii) *Approval of hospital pharmacy.* Application for a hospital pharmacy to provide narcotic drugs for detoxification treatment must be submitted to the Food and Drug Administration and the State authority and approval from both is required, except as provided for in paragraph (h)(5) of this section. Within 60 days after the Food and Drug Administration receives the application, it will notify the applicant of approval or denial or will request additional information, when necessary.

(viii) *Approval of shipments to hospital pharmacies.* Before a hospital pharmacy may lawfully receive shipments of narcotic drugs for detoxification treatment, a responsible official shall complete, sign, and file in duplicate with the Food and Drug Administration and the State authority Form FDA-2636 "Hospital Request for Methadone Detoxification Treatment" (see paragraph (k) of this section) and must have received from the Food and Drug Administration a notice that the request has been approved.

(ix) *Sanctions.* Failure to abide by the requirements described in this section may result in revocation of approval to receive shipments of narcotic drugs for narcotic addict treatment, seizure of the drug supply on hand, injunction, and criminal prosecution.

(g) *Confidentiality of patient records.* (1) Except as provided in paragraph (g)(2) of this section, disclosure of patient records maintained by any program is governed by the provisions of 42 CFR Part 2, and every program must comply with that part. Records on the receipt, storage, and distribution of narcotic medication are also subject to inspection under Federal controlled substances laws: But use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel.

(2) A treatment program or medication unit or any part thereof, including any facility or any individual, shall permit a duly authorized employee of the Food and Drug Administration to have access to and to copy all records on the use of narcotic drugs in accordance with the provisions of 42 CFR Part 2. A treatment program may reveal such records only when necessary in a related administrative or court proceeding.

(h) *Denial or revocation of approval.* (1) Complete or partial denial or revocation of approval of an application to receive shipments of narcotic drugs (Forms FDA-2632 "Application for Approval of Use of Methadone in a Treatment Program" and FDA-2636 "Hospital Request for Methadone Detoxification Treatment") may be proposed to the Commissioner of Food and Drugs by the Director of the Food and Drug Administration's Center for Drug Evaluation and Research, on his or her own initiative or at the request of representatives of the Drug Enforcement Administration, Department of Justice, National Institute of Drug Abuse, the State authority, or any other interested person.

(2) Before presenting such a proposal to the Commissioner, the Director of the Center for Drug Evaluation and Research, or his or her representative, will notify the applicant in writing of the proposed action and the reasons therefor and will offer the applicant an opportunity to explain the matters in question in an informal conference and/or in writing within 10 days after receipt of such notification. The applicant shall have the right to hear and to question the information on which the proposal to deny or revoke approval is based, and may present any oral or written information and views.

(3) If the explanation offered by the applicant is not accepted by the Center for Drug Evaluation and Research as sufficient to justify approval of the application, and denial or revocation of approval is therefore proposed, the Commissioner will evaluate information obtained in the informal conference and/or in writing before the Director of the Center for Drug Evaluation and Research. If the Commissioner finds that the applicant has failed to submit adequate assurance justifying approval of the application, the Commissioner shall issue a notice of opportunity for hearing with respect to the matter pursuant to § 314.200 of this chapter and the matter shall thereafter be handled in accordance with established procedures for denial or revocation of approval of a new drug application. If the Secretary determines that there is an imminent hazard to health, revocation of approval will become effective immediately and any administrative procedure will be expedited. Upon revocation of approval of an application, the Commissioner will notify the applicant, the State authority, the Drug Enforcement Administration, Department of Justice, and all other appropriate persons that the applicant may no longer receive shipments of narcotic drugs, and will require the recall of all of the drugs from the applicant. Revocation of approval may also result in criminal prosecution.

(4) Denial or revocation of approval may be reversed when the Commissioner determines that the applicant has justified approval of the application.

(5) A treatment program or medication unit or any part thereof, including any facility or any individual, may appeal to the Food and Drug Administration a complete or partial denial or revocation of approval by the State authority unless the denial or revocation is based upon a State law or regulation. The appeal shall first be made to the Director of the Center for Drug Evaluation and Research, who shall hold an informal conference on the matter in accordance with paragraph (h)(2) of this section. The State authority may participate in the conference. The appellant or the State authority may appeal the Director's decision to the Commissioner, who shall decide the matter in accordance with paragraph (h)(3) of this section. If the Commissioner denies or revokes approval, such action shall be handled in accordance with paragraph (h)(3) of this section. The Commissioner may not grant or retain Food and Drug Administration approval if the Commissioner finds that the appellant is not in compliance with all applicable State laws and regulations and with this section.

(i) *Sanctions*—(1) *Program sponsor or individual responsible for a particular program.* If the program sponsor or the person responsible for a particular program fails to abide by all the requirements set forth in this regulation, or fails to adequately monitor the activities of those employed in the program, he or she may have the approval of his or her application revoked, his or her narcotic drug supply seized, an injunction granted precluding operation of his or her program, and criminal prosecution instituted against him or her.

(2) *Persons responsible for administering or dispensing narcotic drugs.* If a person responsible for administering or dispensing narcotic drugs for narcotic addict treatment fails to abide by all the requirements set forth in this regulation, criminal prosecution may be instituted against him or her, his or her drug supply may be seized, the approval of the program may be

revoked, and an injunction may be granted precluding operation of the program.

(j) *Requirements for distribution by manufacturers of narcotic drugs for narcotic addict treatment*—(1) *Distribution requirements.* Shipments of narcotic drugs for narcotic addict treatment are restricted to direct shipments by manufacturers of the drugs to approved treatment programs using the narcotic drugs and to approved hospital pharmacies. If requested by a manufacturer or State authority, wholesale pharmacy outlets in some regions or States may be authorized to stock narcotic drugs for narcotic addict treatment for that area and then transship the drug to approved narcotic treatment programs and approved hospital pharmacies. Alternative methods of distribution will be permitted if they are approved by the Food and Drug Administration and the State authority. Prior to any approval of an alternative method of distribution there will be consultation with the Drug Enforcement Administration, Department of Justice, to assure compliance with its regulations regarding controlled substance distribution.

(2) *Information regarding approved programs and hospitals.* The Food and Drug Administration will provide manufacturers and the public with names and locations of programs and hospitals that have been approved to receive shipments of narcotic drugs for narcotic addiction treatment. All information contained in the forms required by paragraph (k) of this section is available for public disclosure, except the names or other identifying information with respect to patients.

(3) *Acceptance of delivery.* Delivery shall only be made to a licensed practitioner or a licensed pharmacist employed at the facility. At the time of delivery the licensed practitioner or licensed pharmacist shall sign for the drugs and place his or her specific title and identification number on any invoice. Copies of these signed invoices shall be kept by the manufacturer.

(k) *Program forms.* The program sponsor must ensure that the following forms are completed by the proper program staff and submitted to the appropriate State authority and the Division of Scientific Investigations, Regulatory Management Branch (HFD–342), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Forms are available upon request from the Regulatory Management Branch (HFD–342), at the same address.

Form

FDA2632—Application for Approval of Use of Methadone in a Treatment Program.
FDA–2633—Medical Responsibility Statement for Use of Methadone in a Treatment Program.
FDA–2635—Consent to Methadone Treatment.
FDA–2636—Hospital Request for Methadone Detoxification Treatment.

(Collection of information requirements approved by the Office of Management and Budget under number 0910–0140.)

Charles R. Schuster,

Director, National Institute on Drug Abuse.

Frank E. Young,

Commissioner of Food and Drugs.

Dated: January 9, 1989.

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BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0445]

National Institute on Drug Abuse; Guidance on the Use of Methadone in Maintenance and Detoxification Treatment: Availability

AGENCIES: Food and Drug Administration and National Institute on Drug Abuse.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance on the Use of Methadone in Maintenance and Detoxification Treatment of Narcotic Addicts." This guidance document consists of recommended practices in the maintenance and detoxification of narcotic addicts. The guidance document is intended to be used in conjunction with the final regulation on methadone in maintenance and detoxification treatment, which is published elsewhere in this issue of the **Federal Register**.

ADDRESSES: The guidance document is available for review at, and written comments are to be submitted to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the guidance document are available from the Legislative, Professional, and Consumer Affairs Branch (HFD-365), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. (Send a self-addressed adhesive label to assist the Branch in processing your request.)

FOR FURTHER INFORMATION CONTACT: Robert J. Meyer, or Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 2, 1987 (52 FR 37046), FDA and the National Institute on Drug Abuse (NIDA) jointly published a proposed rule to revise the regulation on the conditions for the use of methadone in maintenance and detoxification treatment (21 CFR 291.505). The agencies proposed a number of revisions, which were designed to streamline the regulation and to promote more efficient operation of narcotic treatment programs. A significant revision involved the development of a separate guidance document consisting of those provisions of § 291.505 that were not legal requirements. Although these provisions are, in effect, already guidance, their inclusion in § 291.505 made it difficult to distinguish them from other provisions that are legal requirements. Therefore, FDA has incorporated those provisions into a guidance document entitled "Guidance on the Use of Methadone in Maintenance and Detoxification Treatment of Narcotic Addicts." This document announces the availability of the guidance document.

Elsewhere in this issue of the **Federal Register**, FDA and NIDA are publishing the final regulation based on the October 2, 1987, proposal. Also in this issue of the **Federal Register**, the agencies are publishing a proposed rule to provide minimum service maintenance treatment to patients awaiting placement in comprehensive maintenance treatment, and an advance notice of proposed rulemaking soliciting comments on a pilot study designed to help identify improved measures of methadone program performance and thus enhance the quality of treatment.

This guidance document is not legally binding on FDA, NIDA, or any individual or organization, and it does not represent the formal legal opinion of either FDA or NIDA. The recommendations contained in the guidance document are intended to give guidance to programs that want to provide more and better services than the minimum required by the regulation. States may also wish to consider the guidance document when developing requirements for using methadone in the treatment of narcotic addiction.

Interested persons may submit written comments on the guidance document to the Dockets Management Branch (address above). FDA will consider these comments to determine whether any future revisions to the guidance document are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and all comments received on it may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Requests for copies of the guidance document should be submitted to the Legislative, Professional, and Consumer Afffairs Branch (address above).

Charles R. Schuster,

Director, National Institute on Drug Abuse.

Frank E. Young,

Commissioner of Food and Drugs.

Dated: January 9, 1989.

[FR Doc. 89-4685 Filed 3-1-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 291

[Docket No. 88N-0444]

National Institute on Drug Abuse; Methadone in Maintenance Treatment of Narcotic Addicts; Joint Proposed Revision of Conditions for Use

AGENCIES: Food and Drug Administration and National Institute on Drug Abuse.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA) are proposing to revise the conditions for the use of methadone in the maintenance treatment of narcotic addicts. The proposal would allow programs to provide minimum service (interim) maintenance treatment to patients awaiting placement in comprehensive maintenance treatment and require programs to provide counseling on avoidance of human immunodeficiency virus (HIV) transmission. These requirements are being proposed in response to the HIV epidemic and are intended to allow more narcotic addicts into treatment more quickly, thereby decreasing the incidence of intravenous drug abuse and the transmission of HIV.

DATE: Comments by April 3, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, or Robert J. Meyer, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the Federal Register, FDA and NIDA have published a final rule revising the conditions for the use of methadone in maintenance and detoxification treatment. Among other changes, the final rule provides for long-term (180-day) detoxification treatment and eliminates the mandatory patient/counselor ratio. Elsewhere in this issue of the Federal Register, the agencies are also publishing a notice of availability of a guidance document which sets out recommended practices, as opposed to the requirements contained in the regulation, in the methadone treatment of narcotic addiction.

In addition, elsewhere in this issue of the Federal Register, FDA and NIDA are publishing an advance notice of proposed rulemaking soliciting comments on a pilot study designed to help identify improved measures of methadone program performance and thus enhance the quality of treatment.

FDA and NIDA are now proposing to revise the methadone regulation to provide programs with the additional flexibility that may be required to facilitate admission of narcotic addicts into methadone treatment programs. Under these proposed interim maintenance treatment provisions, methadone treatment programs will be allowed to dispense methadone to medically evaluated narcotic addicts who are awaiting placement in comprehensive maintenance treatment. The programs would be required to provide these patients only a limited range of services until they are transferred to comprehensive maintenance treatment, which provides a full range of services. This initiative is being undertaken by FDA and NIDA in response to the HIV epidemic in the intravenous (IV) drug abusing population and is intended to help reduce the spread of HIV infection.

II. Basis for Action

Acquired immune deficiency syndrome (AIDS) is making massive inroads into the IV drug abuser population (Ref. 1), and increasing access to methadone treatment is one action that should be taken to help reduce the spread of HIV infection. Methadone treatment should decrease an individual's use of IV narcotic drugs, therefore decreasing the use of hypodermic needles and curtailing the spread of HIV, which is known to be transmitted by sharing contaminated hypodermic needles. Studies support this thesis and indicate that methadone treatment is, in fact, an effective method of limiting the transmission of HIV and that drug addicts in methadone treatment have a lower incidence of HIV positive test results and less frequent use of needles than addicts outside of programs (Refs. 2 and 3). A recent study conducted by a methadone treatment program under an investigational new drug application (IND) showed that minimum service maintenance treatment, similar to the interim maintenance treatment provided for in this proposal, significantly reduced needle use among the program's patients (Ref. 4).

FDA and NIDA recognize that shortages of funds, facilities, and trained personnel limit the immediate expansion of narcotic treatment programs. The agencies are also aware of the waiting lists for methadone treatment that are currently present in a number of cities across the nation. Accordingly, FDA and NIDA are proposing changes in the methadone regulation that will permit programs to provide interim maintenance treatment to help alleviate the human suffering of addicted individuals and reduce the abuse of IV drugs. The title "interim maintenance treatment" is doubly appropriate, because the treatment is an interim treatment for the patient until he or she can be admitted to comprehensive maintenance treatment and, at the same time, the treatment modality itself is intended to be an interim response to an emergency situation until the expansion of the capacity of comprehensive maintenance and detoxification treatment programs can be implemented. The Presidential HIV Epidemic Commission report (Ref. 5) also acknowledged the existence of this emergency situation, and further stated that:

> The National Institute on Drug Abuse (NIDA) estimates that 6.5 million people are now using drugs in a manner which significantly impairs their health and ability to function. Of these, 1.2 to 1.3 million are intravenous drug abusers. At any given time there are probably not more than 250,000 drug abusers in treatment, of whom 148,000 are intravenous drug abusers. The lack of treatment capacity has produced long waiting lists for treatment, in some cases up to six months, in three out of four cities in the United States. During this waiting period many intravenous drug abusers continue to use drugs intravenously several times each day, increasing their risk of contracting and spreading HIV, and in many cases diminishing their resolve to enter treatment.

FDA and NIDA believe that it is a necessary response to the HIV epidemic to allow programs to establish interim maintenance treatment. The agencies do not intend interim maintenance to become an alternative to comprehensive maintenance, with patients placed in interim treatment for extended periods of time. Patients would be placed in interim maintenance only when there are no openings available, and there should be a real expectation of their being transferred to comprehensive treatment at the end of a finite and relatively short period of time. The agencies intend that interim

maintenance treatment be an adjunct to comprehensive maintenance treatment rather than a substitute for it. The proposed regulation would not, however, compel programs to transfer patients from interim maintenance treatment to comprehensive maintenance treatment within any fixed period of time. The agencies considered, but rejected, proposing additional limitations on admission to interim maintenance and mandatory transfer criteria, because these limitations would excessively interfere with the exercise of sound medical judgment by a program's medical staff. Instead, the proposal would require that interim maintenance be offered only by programs also offering comprehensive maintenance and that programs formally evaluate patients at 6-month intervals to determine whether patients meet transfer criteria set by the program. The agencies specifically solicit comments on the adequacy of this approach to prevent inappropriate long-term interim maintenance, and solicits comments on other means to encourage timely transfer from interim to comprehensive maintenance treatment. One approach under consideration is a requirement that programs maintain a certain minimum ratio between the number of comprehensive maintenance treatment slots and interim maintenance treatment slots.

The agencies also solicit comments on (1) whether the approach set forth in this proposal, of totally prohibiting stand-alone interim maintenance programs, should be implemented; or (2) whether, and under what circumstances, referral arrangements should be allowed between stand-alone interim and comprehensive maintenance programs.

The proposal would require programs to counsel patients on reducing the risk of HIV transmission. The incidence of HIV infection among IV drug abusers in some cities is close to 50 percent, and the situation is worsening across the country (Ref. 1).

RDA and NIDA have considered requiring HIV testing as part of the pre-admission physical examination, but have tentatively decided not to make testing mandatory. The agencies encourage programs to provide access to HIV testing services for patients entering interim and comprehensive maintenance and detoxification treatment. FDA and NIDA request comments on the question of requiring HIV testing in methadone treatment programs. Issues of particular interest to the agencies include the availability, cost (including internal cost), and frequency of testing; the impact of testing on an addict's decision to enter treatment; and what treatment decisions are made based on the results of HIV testing.

III. Summary of the Proposal

"Interim maintenance treatment," which is defined in proposed § 291.505(a)(2)(ii) and the requirements for which are set out in proposed § 291.505(d)(7), would allow programs to provide methadone to narcotic addicts awaiting admission to comprehensive maintenance treatment. To distinguish between this new treatment modality and the current maintenance treatment modality, the pre-existing maintenance treatment would be referred to as "comprehensive maintenance treatment." (See proposed § 291.505(a)(2)(i).) Programs offering interim maintenance treatment would be required to provide a medical examination and services, but rehabilitative services will not be required. Programs would, of course, be encouraged to provide counseling or other services beyond the minimum requirements of the regulation. No take-home medication would be allowed, and clinics offering interim maintenance treatment will be required to be open 7 days a week to dispense medication. No random drug screening tests would be required to be performed on patients in interim maintenance treatment, because all methadone would be ingested under observation. The agencies believe that this approach would provide adequate protection against diversion, and solicit comments as to the utility of random urine testing of interim-care patients.

Under the proposal, programs would be required to establish and follow reasonable written priorities, which may take into account medical and rehabilitative factors, for transferring patients from interim maintenance treatment to comprehensive maintenance treatment. Programs may wish to consider such factors as pregnancy, HIV positive blood tests, and the presence of clinical AIDS, in setting priority criteria for transferring a patient to comprehensive maintenance. Programs would also be free to transfer patients on a "first come, first serve" basis, as long as the "chronological" system of priority was documented. The agencies anticipate that patients will be transferred to comprehensive maintenance treatment after a relatively brief period in interim maintenance; however, if a patient is in interim maintenance treatment for 6 months, the program would be required to formally evaluate the patient to determine how the patient meets transfer priority criteria. This evaluation would be repeated, at 6-month intervals, until the patient leaves interim maintenance either by transfer to comprehensive maintenance or by leaving the program. The results of this evaluation would have to be noted in the patient's record.

The proposal would prohibit separate interim maintenance treatment programs requiring that interim maintenance treatment be offered only by programs offering comprehensive maintenance (proposed § 291.505(b)(1)(v)).

Under the proposal, methadone for interim maintenance treatment may be dispensed at either a medication unit or the program's primary facility. For methadone to be dispensed at a medication unit for interim maintenance treatment, all provisions in § 291.505(b)(3) on medication units must be met, with the exception of the provisions on counseling and rehabilitative service, which expressly do not apply to interim maintenance treatment. (See paragraphs (b)(2)(iii) and (3)(iv)(B) of § 291.505 of the final rule as they relate to proposed § 291.505(d)(7)(vi).)

Counseling on avoidance and transmission of HIV would be required under proposed § 291.505(d)(4)(i)(C). This counseling would be offered upon entrance to both detoxification and maintenance treatment. Counseling should be repeated as the program determines it to be necessary.

IV. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Dondero, T., et al., "Human Immunodeficiency Virus in the United States: A Review of Current Knowledge," *Morbidity and Mortality Weekly Report*, Supplement, 36:S–6, Table 2, December 18, 1987.

2. "Report on Effectiveness of Drug Abuse Treatment as an AIDS Prevention Strategy," Unpublished NIDA Report, July 29, 1988.

3. Ball, J.C., et al, "Reducing the Risk of AIDS through Methadone Treatment," *Journal of Health and Social Behavior*, 29:214–226, 1988.

4. Yancovitz, S., et al., "Innovative AIDS Risk Reduction Project: Interim Methadone Clinic," paper presented at the IV International AIDS meeting, Stockholm, 1988.

5. "Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic," p. 96, June 1988.

V. Environmental Impact

FDA has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

FDA and NIDA have examined the regulatory impact and regulatory flexibility implications of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agencies find that the proposed rule is not a major rule inasmuch as the revisions proposed would not result in any significant increase in cost to narcotic treatment programs or to the State and local authorities that would enforce the proposed rule. In fact, this proposal would allow maintenance treatment of narcotic drug addicts at a lower-per-patient cost. For these reasons, therefore, the agencies have determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, FDA and NIDA certify that the proposed rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

VII. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Transfer Priority Criteria Evaluation Notation.

Description: FDA and NIDA are requiring this notation to ensure that a record exists of the transfer criteria evaluation, which is designed to help prevent interim maintenance treatment from becoming a long-term treatment modality for any patient.

Description of Respondents: State or local governments, businesses or other for-profit organizations; nonprofit institutions.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response
§ 291.505(d)(7)	20	200	5 minutes annual burden hours 333

The agencies have submitted a copy of this proposed rule to OMB for its review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FDA's Dockets Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

VIII. Request for Comments

The agencies are requesting that all comments on this proposed rule be submitted within 30 days after publication, rather than the customary 60 days, due to the imminent threat to the public health posed by the HIV epidemic, as is discussed above. FDA and NIDA will be mailing copies of this proposal to all approved treatment programs, to State regulatory agencies (including State drug abuse authorities), to individuals and organizations who have submitted comments on methadone-related documents in the past, and to other individuals and organizations that are likely to be concerned with the proposal, so they may comment within the 30-day period.

Interested persons may, on or before April 3, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 291

Health professions, Methadone, Reporting and recordkeeping requirements.

Therefore, under the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Narcotic Addict Treatment Act of 1974, and applicable delegations of authority thereunder, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 291 be amended as follows:

PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

1. The authority citation for Part 291 continues to read as follows:

Authority: Secs. 3, 505, 701(a) (21 U.S.C. 823(g), 355, 371(a)); secs. 4, 548 (42 U.S.C. 257a, 290ee–3).

2. Section 291.505 is amended by inserting the word "comprehensive" before the word "maintenance" everywhere it appears in paragraphs (d)(1)(i), (d)(1)(iii), (d)(1)(iv), (d)(2)(i), (d)(3)(v)(D), (d)(4)(i)(B)(*2*), (d)(5)(ii), (d)(6)(iv)(B)(*6*), (d)(6)(v)(A)(*1*) and (*3*), (d)(6)(v)(C), (d)(8)(i) introductory text and (d)(8)(i)(E), (d)(9)(i) introductory text and (d)(9)(i)(F), and by revising paragraph (a)(2), and by adding paragraphs (b)(1)(v), (d)(4)(i)(C), and (d)(7) to read as follows:

§ 291.505 Conditions for the use of narcotic drugs; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts under section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

(a) * * *

(2) "Maintenance treatment" means the dispensing of a narcotic drug, at relatively stable dosage levels, in the treatment of an individual for dependence on heroin or other morphine-like drug. There are two types of maintenance treatment: comprehensive maintenance treatment and interim maintenance treatment.

(i) "Comprehensive maintenance treatment" is maintenance treatment provided in conjunction with a comprehensive range of appropriate medical and rehabilitative services.

(ii) "Interim maintenance treatment" is maintenance treatment provided solely in conjunction with appropriate medical services while a patient is

awaiting transfer to comprehensive maintenance treatment.

* * * * *

(b) * * *

(1) * * *

(v) *Interim maintenance treatment.* A narcotic treatment program may provide interim maintenance treatment only if the program also provides comprehensive maintenance treatment to which interim maintenance treatment patients may be transferred.

* * * * *

(d) * * *

(4) * * *

(i) * * *

(C) *Human immunodeficiency virus (HIV) education.* For each patient seeking admission or readmission to a treatment program, the program shall provide counseling on HIV transmission and avoidance.

* * * * *

(7) *Minimum standards for interim maintenance treatment.* The person(s) responsibile for a program may place a patient, otherwise eligible for admission to comprehensive maintenance treatment, in interim maintenance treastment if the program does not have open treatment slots available in comprehensive maintenance treatment. A program shall establish and follow reasonable criteria for establishing priorities for transferring patients from interim maintenance to comprehensive maintenance treatment. These transfer criteria shall be in writing and available for inspection. If a patient is transferred from interim maintenance treatment to comprehensive maintenance treatment other than in accordance with the written criteria, a justification for the transfer shall be entered in the patient's record. Six months after a patient has entered interim maintenance treatment, the program shall evaluate that patient to determine if the patient meets transfer priority criteria. The evaluation shall be repeated every 6 months until the patient leaves interim maintenance treatment, either by transferring to comprehensive maintenance treatment or by leaving the program. The results of all such evaluations shall be recorded in the patient's record. All requirements for comprehensive maintenance treatment apply to interim maintenance treatment with the following exceptions:

(i) The narcotic drug is required to be administered daily under observation;

(ii) Take-home medication is not allowed;

(iii) Drug-screening tests are not required except for the initial drug-screening test required to be given each prospective patient;

(iv) The initial treatment plan and periodic treatment plan evaluation are not required;

(v) A primary counselor is not required to be assigned to a patient; and

(vi) The requirements and exceptions in paragraphs (b)(2)(iii), (b)(3)(iv)(B), (d)(4)(i)(A) and (B), (d)(4)(ii)(E) and (F), (d)(4)(iv), and (d)(6)(iv), (v), (vi), and (vii) of this section do not apply.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

Dated: January 18, 1989.

[FR Doc. 89-4686 Filed 3-1-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 291

[Docket No. 88N-0434]

Conditions for the Use of Methadone; Advance Notice of Proposed Rulemaking; Request for Comments

AGENCIES: National Institute on Drug Abuse and Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The National Institute on Drug Abuse (NIDA) and the Food and Drug Administration (FDA) want to develop a method for evaluating the effectiveness of methadone treatment programs. The long-term goal of this effort is to develop performance standards for programs, based upon treatment outcome. Such standards could serve as an alternative to the detailed requirements currently contained in the Federal methadone regulation (21 CFRA Part 291). Ideally, if acceptable standards could be developed, then a treatment program would simply have to demonstrate that it meets the standards; i.e., that it is above the threshold for acceptable treatment. To move toward this goal, NIDA and FDA believe the first step is to conduct a feasibility study designed to identify the practical problems inherent in such a system, the costs, and the benefits. The appendix to this advance notice contains one proposal for a pilot feasibility study. This advance notice solicits public comment on the potential value of performance-based evaluation standards as a means of evaluating treatment programs, on the proposed pilot study contained in the appendix, and recommendations for other approaches that would achieve the same objective.

DATE: Comments by May 1, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Stephen P. Molinari, Office of Medical and International Affairs, Rm. 8A-54, National Institute on Drug Abuse, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4877.

SUPPLEMENTARY INFORMATION:

I. Authority

Legislative authority for involvement by the Department of Health and Human Services in the treatment of narcotic addiction is included in section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91-513) which requires the Secretary of Health and Human Services (the Secretary) to determine the appropriate methods of professional practice for the medical treatment of narcotic addiction. In addition, the Narcotic Addict Treatment Act of 1974 (Pub. L. 93-281) was enacted by Congress as a means to ensure that only confirmed narcotic addicts are admitted to treatment, that they receive quality care, and that illicit diversion is limited. Specifically, Pub. L. 93-281 amended the Controlled Substances Act (21 U.S.C. 823) to require that practitioners who wish to dispense narcotic drugs to individuals for the maintenance treatment or detoxification treatment of narcotic addiction must be registered annually with the Department of Justice, Drug Enforcement Administration (DEA). Registration depends, in part, upon a determination by the Secretary that the applicant is qualified, under treatment standards established by the Secretary, to engage in such treatment. In addition, the applicant must comply with standards established by the Secretary (after consultation with DEA) respecting the quantities of narcotic drugs that may be provided for unsupervised use by individuals in such treatment. Finally, the applicant must comply with standards established by DEA respecting security of stocks of narcotic drugs used for such treatment and maintenance of records on such drugs. The Secretary has delegated the authority to establish treatment standards to NIDA and the authority to evaluate the safety and effectiveness of drugs for use in the treatment of narcotic addiction to FDA.

II. Background

Although the national concern about levels of illicit drug use in this country has led to increased Federal funding for treatment programs, resources are limited and must be directed to those drug abuse control activities found to be most effective. Several recent reports acknowledge the need to increase the effectiveness of treatment programs, and make specific recommendations. The White House Conference for a Drug Free America, among its treatment recommendations, recommended an increase in treatment slots, the development of a standardized, objective method for determining drug treatment outcome and treatment effectiveness, and more treatment program accountability so that Federal funds may be distributed based on effectiveness (Ref. 1). The National Drug Policy Board, established by Executive Order 12590 on March 26, 1987, to centralize oversight for all aspects of the Federal anti-drug effort, set an objective to direct Federal research to improve quality and efficiency of treatment (Ref. 2). The General Accounting Office, in a report on managing the Federal drug control efforts, stated that measures of program effectiveness are needed and should be developed by the Federal government (Ref. 3). The report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic recommended that NIDA, in conjunction with State and local agencies and treatment providers, develop a plan for increasing the capacity of the drug treatment system. It further recommended that the plan include elements to ensure quality of care and mechanisms to evaluate progress. In addition, the Commission recommended that the Federal government develop scientifically based quality assurance mechanisms for evaluating quality of care (Ref. 4). Finally, the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690) authorizes the use of certain funds for data collection, and requires an evaluation of treatment program quality. These various sources have all clearly recognized the need for monitoring and evaluating treatment programs to improve the quality of care.

III. A Pilot Study

NIDA and FDA believe that before a full-scale effort to collect information for the evaluation of methadone treatment programs and the development of performance standards is initiated, a pilot study will be necessary. The pilot study will help to assess the appropriateness of the data and the methodology used to collect that data. The appendix to this notice details a proposal for such a study. The agencies seek comments on this approach, names of treatment programs, and State and local agencies that would be interested in participating in the pilot study.

IV. Request for Comments

FDA and NIDA request comments on all aspects of this notice and on alternative means of achieving these objectives. The agencies are particularly interested in data and information relevant to the following specific questions:

1. In developing a method for undertaking an ongoing treatment program evaluation, such as is being proposed, perhaps the most significant question is what mechanism can be used to assure that there is a fair comparison among treatment programs. The agencies realize that treatment programs do not necessarily serve the same types of individuals. Some programs may admit a large proportion of individuals who are unemployed, have little education, have long histories of chronic drug use, and suffer from severe physical or psychiatric problems. In contrast, other programs may be selective and limit their admissions to individuals who have greater financial, social, and psychological assets. NIDA and FDA believe these concerns may be answered by using the Addiction Severity Index (ASI), developed by McClellan et al. (Ref. 5), as an admission diagnostic instrument to categorize programs into one of several problem severity categories. (The ASI is discussed in the appendix to this notice.) However, the agencies also realize that other important factors may involve matters such as program philosophies and funding. In addition, programs themselves vary in terms of resources and staffing. Therefore, should programs be categorized based on these parameters, the ASI, or should even other factors be used to categorize programs?

2. Another significant question to which the agencies are soliciting opinion in what are the appropriate treatment measures that should be considered. NIDA and FDA believe that some important treatment performance measures include illicit drug use, medication noncompliance, retention of patients in treatment, and types of patient discharge; e.g., successful completion of treatment, left against advice of the program, or arrested. The agencies are also seeking comments on how to measure patient movement between programs and/or recidivism.

3. The agencies also invite comments on whether the data should be required for patients in comprehensive maintenance treatment only, or whether it would also be useful and appropriate to require the same or some other types of data for patients in detoxification (both short-term and long-term) treatment, and for patients in interim-care treatment. The proposal for the interim-care treatment modality is contained elsewhere in this issue of the Federal Register.

4. The agencies believe information to be collected should include reporting positive urine test results for those drugs for which the methadone regulation currently requires testing; i.e., opiates, cocaine, barbiturates, and amphetamines, and negative results for methadone. The agencies are aware that some have questioned the need to continue to test for amphetamines and barbiturates, arguing that there is no longer widespread abuse of these drugs among patients in methadone treatment programs. Others have asserted that marijuana use and benzodiazepine abuse are more of a problem and testing should be required for these substances. The agencies welcome any information including supporting data addressing the need to maintain or change the drugs for which testing is required.

5. Related questions with regard to urine testing are which analytical test procedures should be used and the laboratories that should perform the tests. The agencies recommend only using urine test results obtained by the immunoassay procedure when measuring drug use. This method was chosen because many programs now use this method, and, for comparison purposes, it is important that the test procedures be consistent. More specificity is obtained by using chromatographic test methods. However, some methods, e.g., gas chromatography/mass spectrometry which is now required as the confirmatory test procedure to be used in the Federal workplace drug testing programs (Ref. 6), are more expensive to perform than the immunoassay. Comments are requested on the adequacy of the immunoassay method for this purpose or, in the alternative, whether a chromatographic procedure should be required instead of the immunoassay, or in addition to the immunoassay, as a confirmation test. With regard to which laboratories should perform the testing, the pilot study proposes that urine testing be performed by those laboratories which currently perform the analytical testing or treatment programs. The agencies solicit comments on the adequacy of this procedure or whether the urine

specimens should be sent to designated laboratories to assure uniform proficiency testing.

V. References

The following information has been placed on display in FDA's Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. The White House Conference for a Drug Free America, Final Report, June 1988.
2. Report from the National Drug Policy Board: "Toward a Drug-Free America; The National Strategy and Implementation Plan," 1988.
3. Special Report from the Comptroller General of the United States, "Controlling Drug Abuse: A Status Report," GAO/GGD–88–39.
4. Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic, June 1988.
5. NIDA Treatment Research Report, "Guide to the Addiction Severity Index: Background, Administration, and Field Testing Results," DHHS Publication No. (ADM) 88–1419, 1988.
6. "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970–11989; April 11, 1988.

Appendix: Pilot Study Proposal

A. Overview

To develop appropriate performance standards, extensive data on treatment populations, treatment characteristics, and patient outcomes need to be gathered. NIDA and FDA have developed a draft proposal for a pilot study on methadone treatment program effectiveness. Under the proposal a representative sample of treatment programs would voluntarily join in an effort to collect needed data. Under this voluntary pilot study methadone treatment programs would submit demographic and diagnostic data on every patient currently in treatment and every new admission. These data would be used to categorize programs along a continuum of patient problem severity. Quarterly, each program would collect urine specimens following a standardized procedure and submit the results along with patient discharge data to NIDA.

The aggregate results of the urine tests as well as patient retention rates (for each patient problem severity category) would be compiled quarterly by NIDA and would serve as a benchmark against which programs may be compared.

B. Admission Data

The agencies are considering to propose that the ASI be used as the admission diagnostic instrument. The ASI is a structured, 45-minute interview that assesses patient problems in seven areas: medical condition, psychiatric condition, drug use, alcohol use, family relations, employment, and illegal activity. The interview necessary to complete the ASI can be given by a trained technician. The ASI has the advantage of covering a range of problems commonly manifested in drug abusers, having a standardized content and evaluation method, and demonstrated reliability and validity. The instrument permits reporting objective data on the number, intensity, and duration of problem symptoms; subjective information based upon the interviewee's rating of the severity of his or her problems and need for treatment; the interviewer's estimate of problem severity; and a composite score.

NIDA and FDA believe that the ASI would be the most appropriate instrument for providing admission information for several reasons. First, most treatment program personnel are familiar with the ASI, since it has been used for over 10 years. Moreover, it is estimated that almost half of the treatment programs use the ASI as an admission interview, including those programs administered by the Veterans' Administration. In addition, some States already require the ASI as part of the admission process.

C. Problem Severity Category

Each program would be placed into one of several program categories on the basis of the types of patients in treatment during a reporting period. The categories would be a composite of the seven ASI factors. The categories would ensure that only programs with like characteristics in terms of severity of client problems are compared.

D. Urine Tests

Each day, except Sunday, a random sample of treatment programs would be selected to collect urine specimens. The sampling would be designed to ensure that each program is selected once each quarter. NIDA would notify a selected program, no earlier than 24 hours before the program opens for business, that urine must be collected that day. Selected programs would collect specimens on every patient seen that day prior to the administration of methadone. Each program would assure that appropriate chain-of-custody procedures are used for urine collection to minimize falsification and collection errors. The program would send the urine specimens to a laboratory which is in compliance with all Federal proficiency testing and licensing standards. The laboratory would perform an immunoassay on all specimens to determine the presence of opiates, cocaine, amphetamines, barbiturates, and methadone. Unannounced on-site audits, including urine collection, may be performed from time-to-time to assess validity in reporting and in collecting urine specimens.

E. Initial Treatment Program Submission

Initially, those participating treatment programs would submit the following information: (1) A list of all patients in maintenance treatment, identified by number only; (2) the date of admission for each patient; (3) methadone dose of each patient; (4) number of take-home doses of methadone, if any, that each patient receives; (5) other treatment services, e.g., counseling, rehabilitative, vocational, or educational services, each patient is receiving; and (6) a copy of the results of the ASI administered to each patient.

F. Quarterly Treatment Program Log

On the urine collection day, the program would complete a quarterly log containing the following information: (1) All active patient identification numbers; (2) patients scheduled to be seen that day; (3) patients from whom urine specimens were collected; (4) patients discharged since the last reporting period, and the date and reason for discharge; (5) methadone dose by patient; and (6) number of take-home doses of methadone, if any, that each patient receives.

Programs would submit their quarterly logs and the results of the urine tests within 21 days of the urine collection date.

Admission information on patients who have entered into treatment since the last reporting date would be submitted with the quarterly log.

G. Quarterly Report

Each quarter, NIDA would tabulate the urine test and retention data in two formats. The first format would present urine test and retention results for the previous eight reporting quarters for programs falling into each of the several problem severity categories. The measures to be reported would include, at a minimum:

Drug use: The percentage of collected urine specimens found positive for each illicit drug or found negative for methadone;

Retention: The average length of time active patients have been in treatment;

Participating patients: The number and percentage of active patients on whom urine tests were collected;

Discharge: The percentage of patients who were discharged from the program each quarter reported by type of discharge (successfully completed treatment, left against program advice, transferred to another program, died, arrested, etc.).

The second format would also present the urine and retention results by problem severity category, but it would aggregate the data by length of time in treatment rather than by calendar period. For this purpose, patients would be compared by weekly cohorts; i.e., each cohort of patients would consist of those patients first admitted to treatment during any 1 week. The following measures would be reported:

Drug use: The percentage of the cohort of patients in each week of treatment (up to the 104th week) whose urine specimens were found to be positive for each illicit drug or negative for methadone;

Retention: The percentage of the cohort of patients that actually remain in treatment;

Participating patients: The number and percentage of active patients in a given week of treatment from whom urine tests were collected.

In addition to this information, from time-to-time other parameters might be included in the quarterly reports or in special reports. Each participating treatment program would be provided with results for the patients in its program.

H. Patient Confidentiality

In order to comply with the Federal regulation relating to confidentiality of patient records (42 CFR Part 2), programs would supply data relating to patient enrollment, urine test results and discharge data, by patient identification number only.

I. Cost

The pilot study would be funded by NIDA and operated by an independent contractor. Nonetheless, the agencies are particularly interested in comments from treatment programs and other interested parties concerning the anticipated costs that would be incurred with these data collection and reporting procedures and recommendations for mechanisms that might be implemented to maximize cost-effectiveness.

Interested persons may, on or before May 1, 1989, submit to the Dockets Management Branch (address above) written comments regarding this advance notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

Frank E. Young,

Commissioner of Food and Drugs.

Dated: January 9, 1989.

[FR Doc. 89-4687 Filed 3-1-89; 8:45 am]

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Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773, 778, and 843

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control Information; Reporting of Violations; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773, 778, and 843

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control Information; Reporting of Violations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is revising its regulations governing the requirements for an application for a permit to conduct surface coal mining operations. This rule will require a permit applicant to submit more detailed information on persons who own or control it, and will revise the requirements for reporting violations. The rule also will require a regulatory authority to make its decision to approve or disapprove a permit application on the basis of up-to-date information concerning the compliance record of the applicant and related persons. The revisions are needed to conform the permit application requirements with changes in the permitting process and to insure that permits are issued based on current compliance review information.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; telephone (202) 343–5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background

This rule conforms the requirements for an application for a permit to conduct surface coal mining operations with related changes in the permit review process. On October 3, 1988 (53 FR 38868) OSMRE published a final rule which amended its regulations dealing with the review and approval of permit applications. That rule added a definition of the terms "owned or controlled" and "owns or controls" as these concepts are used in section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), 30 U.S.C. 1201 et seq., and expanded the scope of the compliance review which a regulatory authority is required to make prior to the approval of a permit application.

This rule will require a permit applicant to include in his or her application detailed information on the owners and controllers of related operations, and to update that information immediately prior to the issuance of a permit. The rule also will require a regulatory authority to use the updated information in making a final decision to approve or disapprove the application.

The information reported under this rule will provide an essential part of the data contained in OSMRE's computer-based Applicant/Violator System, which processes multiple sources of applicant and violation information to match applicants and their owners and controllers to violators of the Act and its implementing regulatory programs. It is important that the information submitted pursuant to this rule be as complete and up-to-date as is reasonably possible to insure a thorough and accurate review of the compliance record of the permit applicant and related persons prior to making a decision on whether to issue a permit.

The proposed rule to amend 30 CFR 773.15(e) was published on July 16, 1986 (51 FR 25822). The proposed rule to amend 30 CFR 773.17, 778.13 and 778.14 was published on May 28, 1987 (52 FR 20032). No request was received for a public hearing and none was held. The two proposals are being adopted together because their information reporting requirements are interrelated.

II. Discussion of the Rule

The rule language in the proposed rule published on May 28, 1987 has been modified to clarify the reporting requirements in response to comments and to break them into logical components. Any substantive changes from the proposed rule are noted in the preamble discussions of the various sections.

Section 773.15(e)—Final Compliance Review

Under 30 CFR 773.15(b)(1), a regulatory authority may not issue a permit to an applicant if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the Act or certain other environmental laws and regulations. Experience has shown that the time that elapses between the submission of an application and the issuance of the permit typically is several months at a minimum. Information submitted with the application may become dated by the time of permit issuance, thus making it impossible for the regulatory authority to make an accurate compliance review under § 773.15(b)(1).

This rule adds to § 773.15 a new paragraph (e) to require that before a permit is issued the regulatory authority reconsider its initial § 773.15(b)(1) compliance review in light of any new information submitted pursuant to §§ 778.13(i) and 778.14(d) of this rule, which are discussed subsequently. If the applicant fails or refuses to respond as required, the regulatory authority will be unable to make the final compliance review required by § 773.15(e) and a permit will not be issued. The final compliance review based on this updated information will insure that the regulatory authority makes an accurate permitting decision under § 773.15(b)(1). Authority for this section is contained in sections 101, 102, 201(c)(1), 201(c)(2), 412(a), 501(b), 504, 505, 507(b)(4), 510 (a), (b) and (c), 511, 518, 701(16) and 701(19) of the Act.

The proposed rule, published on July 16, 1986, would have added paragraphs (e)(1)(i), (e)(1)(ii) and (e)(2) to § 773.15. Proposed paragraphs (e)(1)(i) and (e)(1)(ii) have been adopted in this rule as §§ 778.13(i) and 778.14(d), respectively, and are discussed later in this preamble. Proposed § 773.15(e)(2) has been adopted in this rule as § 773.15(e).

Section 773.17(i)—Permit Condition

Section 773.17(i) is a new permit condition requiring the submission, correction or update of certain information after the issuance of a cessation order. It applies to all permits to conduct surface coal mining operations, including those issued prior to the adoption of this rule.

Section 773.17(i) will require that within thirty days of the issuance of a cessation order under 30 CFR 843.11, or the State program equivalent, the permittee of the surface coal mining and reclamation operation for which the cessation order was issued shall either submit, correct or update and furnish to the regulatory authority that issued the permit, the information required by § 778.13(c) of this rule concerning the identity of persons who own or control the permittee. The information must be current to the date the cessation order was issued. If there has been no change in the information previously submitted, the permittee must notify the regulatory authority of that fact in writing. The regulatory authority will enter any new information into the Applicant/Violator

System, which will insure that the data in the System is current.

A permittee's failure to comply with this permit condition will result in appropriate enforcement action by the regulatory authority. The obligation to furnish the updated information applies even if the cessation order is under appeal. This obligation is consistent with 43 CFR 4.1116, which states that except where temporary relief is granted pursuant to section 525(c) or 526(c) of the Act, cessation orders issued under the Act shall remain in effect during the pendency of review before an administrative law judge or the Interior Board of Land Appeals. If temporary relief from a cessation order is granted, the permittee need not comply with the permit condition as long as the temporary relief is in effect.

The proposed rule would have required that this information be updated and furnished to the regulatory authority on an annual basis. However, once a permit is issued the updated information is needed only if a violation which would require that a new permit be denied occurs and remains uncorrected. In response to comments objecting to the burden of information submittal, OSMRE has decided to require the information update at the issuance of a cessation order, which is such a violation. This will eliminate a superfluous reporting obligation for the majority of permittees who operate in accordance with their permits. If a notice of violation is issued, timely abatement of the violation will avoid not only the issuance of a failure-to-abate cessation order, but also the obligation to submit updated information on owners and controllers. In this manner, the commenters' concern over the amount of information that must be submitted is partially alleviated. The rule will insure that the regulatory authority obtains the names of the owners and controllers of the permittee at the time a cessation order is issued in order to withhold the issuance of new permits to such persons if the underlying violation remains unabated.

Section 778.10—Information collection

Section 778.10 of the rule concerns the information collection requirements in 30 CFR Part 778 including approval by the Office of Management and Budget (OMB) to collect the information and the clearance number assigned by OMB. This rule revises § 778.10 by deleting the reference to clearance number 1029–0037. As stated in § 778.10, the clearance number assigned by OMB to the information collection requirements in Part 778 is 1029–0034.

Section 778.13—Identification of Interests

As stated in the May 28, 1987 proposed rule, the information reporting requirements in this final rule have been conformed as necessary to the recently promulgated final definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5.

Section 778.13(b) of the rule will require each applicant for a permit to conduct surface coal mining operations to include in his or her application the name, address, telephone number, and, as applicable, the employer identification number of the applicant, the applicant's resident agent who will accept service of process and the person who will pay the abandoned mine land reclamation fee. Section 778.13(b) also requests the social security numbers of the above persons, but indicates that the disclosure of any social security number is voluntary.

Section 7(a) of the Privacy Act of 1974, 88 Stat. 1896, specifies that it shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his or her social security number unless the disclosure is required by Federal law or was required under statute or regulation prior to January 1, 1975. Since SMCRA does not specifically require the disclosure of an individual's social security number, and since the information was not required prior to January 1, 1975, no benefit, right or privilege, including a permit to conduct a surface coal mining operation, may be denied for failure to disclose a social security number under this rule.

Section 7(b) specifies that when an individual is asked to disclose his or her social security number, the individual shall be told whether the requirement is mandatory or voluntary. OSMRE is requesting the voluntary disclosure of an individual's social security number pursuant to the authority granted under sections 201 (c)(1) and (c)(2) of the Act. The information will be used to process permit applications and to perform the compliance review required by section 510(c) of the Act and 30 CFR 773.15(b)(1). This exemption from mandatory disclosure applies only to a social security number and not to an employer identification number, which is the taxpayer identification number for business entities such as corporations and partnerships, and for sole proprietors if they pay wages to one or more employees. The submission of the employer identification number is mandatory under this rule.

The requirement in § 778.13(b) of this rule to supply the name of the person who will pay the abandoned mine land reclamation fee is in addition to the requirement in § 778.13(c) to list the operator. Section 402(a) of the Act requires that an operator of a surface coal mining and reclamation operation pay the reclamation fee required by the Act. Experience has shown that often the reclamation fee is paid for the operator by agents such as attorneys, trustees, accounting firms, banks or other companies, or by the permittee if different from the operator. Furnishing the name of the person paying the reclamation fee will assist OSMRE in collecting the money and arranging for audits when necessary. Supplying the name of the person who will actually pay the reclamation fee does not in any way alter the legal obligation of other persons responsible for its payment.

As originally proposed, paragraph (b) requested the social security number *or* taxpayer identification number of the applicant, the operator, the applicant's resident agent, the person who will pay the abandoned mine land reclamation fee, and any contractor who will conduct the surface coal mining and reclamation operation. Since a taxpayer identification number can be either a social security number or an employer identification number, OSMRE has substituted the term "employer identification number" for the term "taxpayer identification number" in order to eliminate any confusion.

The final rule requests the disclosure of both a social security number *and* an employer identification number. OSMRE is requesting both numbers because of the possibility that a person may have used a social security number on some occasions and an employer identification number on others. Requesting both numbers will help to insure that the data in the Applicant/Violater System is complete. A similar change has been made in paragraph (c).

The reference in proposed § 778.13(b) to the operator, and the requirement to furnish information concerning the operator, have been transferred to paragraph (c) of the final rule.

Proposed § 778.13(b) also requested the name of any contractor who will conduct the surface coal mining and reclamation operation. In the final rule, the requirement to furnish information concerning contract mining operations has been transferred to paragraph (c).

Final § 778.13(c) will require the applicant to submit the following information, as applicable, for any person who owns or controls the applicant under the definition of "owned

or controlled" and "owns or controls" in 30 CFR 773.5:

(1) The person's name, address, social security number, and employer identification number;

(2) The person's ownership or control relationship to the applicant, including the percentage of ownership and location in the organizational structure;

(3) The title of the person's position, date position was assumed, and when submitted under § 773.17(i) of this rule, the date of departure from the position;

(4) Each additional name and identifying number, including, employer identification number, Federal or State permit number and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and

(5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any State in the United States.

Under the referenced definition in 30 CFR 773.5 the permit applicant must furnish the above information for all: (1) Operators; (2) officers, directors, and any other persons who perform a function similar to an officer or director; (3) persons having the ability to commit the financial or real property assets or working resources of an entity; (4) general partners; (5) shareholders owning of record a ten percent or greater interest; (6) persons owning or controlling the coal to be mined under the proposed permit under a lease, sublease or other contract, and having the right to receive such coal after mining or having authority to determine the manner in which the proposed surface coal mining and reclamation operation is to be conducted; (7) persons who have any other relationship with the permit applicant which gives them authority directly or indirectly to determine the manner in which the proposed surface coal mining operation is to be conducted; and (8) persons who own or control the persons specified in paragraphs (1) through (7), either directly or indirectly through intermediary entities.

The requirements to list "persons having the ability to commit the financial or real property assets or working resources of an entity," and "persons owning or controlling the coal to be mined * * *" have been added to the final rule because under the definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5 those persons are presumed to own or control the permit applicant. The addition was necessary in order to conform these information reporting requirements with the definition.

Like the proposed rule, the final rule requires a permit applicant to report both direct and indirect ownership and control relationships. As explained in the October 3, 1988 final rule (53 FR 38868) defining "owned or controlled" and "owns or controls," the ten percent ownership presumption applies at each level of a business structure. If a ten percent or greater ownership interest exists at any level, that interest must be reported along with the controllers at that level. For example, if company "A" owned ten percent of company "B," and company "B" owned ten percent of company "C," and company "C" owned ten percent of the applicant, the permit application must list companies "A," "B" and "C" along with the controllers of companies "A," "B" and "C." However, if company "A" owned ten percent of company "B", and company "B" owned nine percent of company "C," and company "C" owned ten percent of the applicant, the permit application would be required to list only company "C" and its controllers. The permit applicant would not be required to list company "A" or company "B" because the ownership interest between company "B" and company "C" was less than ten percent.

If the operator is a business entity and a subsidiary of another corporation, then the operator, its owners and controllers and the owners and controllers of the parent corporation must be reported by the permit applicant. The same also applies to anyone owning or controlling the coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining and reclamation operation. If that person is a business entity and a subsidiary of another corporation, then the owners and controllers of the parent corporation must be reported by the permit applicant, along with an explanation of how each person is linked in the chain of ownership or control.

The requirement of § 778.13(c) to furnish information on anyone owning or controlling the coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining and reclamation operation does not apply to persons who receive coal as an in-kind royalty payment. However, simply labeling the receipt of coal as in-kind royalty payments will not automatically exempt a person or operation from the reporting requirements of this section if the in-kind payment is more than a simple royalty or if the recipient otherwise controls the conduct of the surface coal mining operation.

Under final § 778.13(c)(2), the permit applicant must explain each identified person's ownership or control relationships to the applicant, including the percentage of ownership and the location of the owner or controller in the organizational structure. In the example given above, if company "A" owns ten percent of company "B," and company "B" owns ten percent of company "C," and company "C" owns ten percent of the applicant, the permit application must list companies "A," "B" and "C" along with the controllers of "A," "B" and "C", and must clearly indicate that "A" owns "B," and that "B" owns "C". The applicant must also furnish the percentage of ownership at each level, and when listing officers, directors, general partners, and other persons required to be reported, indicate the business entity they work for. All of the information must be furnished in a manner that will enable the regulatory authority to precisely determine the organizational structure of the applicant and its owners and controllers.

In the proposed rule at § 778.13(d), OSMRE requested the "permit or application numbers or other identifiers" for all current and previous coal mining permits in the United States during the five year period preceding the date of the application. In the final rule, OSMRE has reworded this requirement to "Federal or State permit number, and MSHA number with date of issuance." OSMRE has specifically included the MSHA number here and elsewhere in the final rule so that there is no doubt the number must be included in the permit application. The date of issuance of the MSHA number is being asked for because MSHA reassigns previously issued numbers. If a violation is linked to a particular MSHA number and the number is later reassigned, the date the number was reassigned will allow the regulatory authority to determine that the current site should not be associated with the prior violation.

Final § 778.13(d) will require for any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned

or controlled" and "owns or controls" in 30 CFR 773.5, the operation's:

(1) Name, address, identifying numbers, including employer identification number, the Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(2) Ownership or control relationship to the applicant, including the percentage of ownership and the location in the organizational structure.

Section 778.13(i) of the final rule requires that after an application has been approved but before the permit to conduct a surface coal mining operation is issued, the applicant shall, as applicable, bring up to date, correct, or indicate that no change has occurred in the information previously submitted under paragraphs (a) through (d). If the applicant fails or refuses to submit the information required under § 778.13(i), the regulatory authority will not issue the permit. The updated information will enable the regulatory authority to make an accurate § 773.15(b)(1) compliance review and to take appropriate action.

This provision was proposed on July 16, 1986 (51 FR 25828) as § 773.15(e)(1)(i). It has been codified in the final rule in § 778.13(i) so that the obligation to update information will be located with the requirement for the information that must be updated.

Under § 778.13(j), a permit applicant will be required to submit the information required by §§ 778.13 and 778.14 in any prescribed format that is issued by OSMRE. In the final rule, OSMRE has substituted the term "format" for the term "form." OSMRE has made the substitution to allow for the electronic transfer of data if that can be done in a manner compatible with the operation of the Applicant/Violator System.

For the present OSMRE contemplates use of a standard form as the prescribed format. If a standard form is issued, use of the form will be required by all permit applicants when submitting the information regardless of whether the permit application is filed with OSMRE or a State regulatory authority. The form will cover only the information required by §§ 778.13 and 778.14, and will be in addition to any permit application forms required by any of the State regulatory authorities.

Use of a standard form should facilitate the imput of legal, financial and compliance data into the Applicant/Violator System and help reduce errors when that data is transferred from a permit application to the computer. It should also prove helpful to those applying for permits because it will indicate what information must be furnished pursuant to the regulations. OSMRE will state on any forms requesting a social security number that the submission of a social security number is voluntary. Development and use of any such form will not limit any additional information collection requirements of any approved program.

Section 778.14—Violation Information

Section 778.14(c) will require a permit applicant to submit a list of all violation notices received by the applicant and a list of all cessation orders and air and water quality violation notices received by any surface coal mining operation owned or controlled by either the applicant, or by any person who owns or controls the applicant, during the three year period preceding the application date. The list must cover violations of any provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection. The lists also must contain any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the date of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency. The purpose of this information is to provide the data necessary to perform the compliance review required by section 510(c) of the Act and 30 CFR 773.15(b)(1) prior to making a final decision on whether to issue a permit.

A *violation notice,* as defined in 30 CFR 701.5, includes any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication. While all notices of violation (NOV's) are violation notices, not all violation notices are NOV's. For example, a violation notice may also be a cessation order issued by a regulatory authority or a notice of noncompliance issued by the Environmental Protection Agency. Under § 778.14(c), the permit applicant must list all violation notices, including NOV's, cessation orders, notices of noncompliance, and other citations, regardless of terminology, for any violation of any provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection in connection with any surface coal mining operation. For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant only cessation orders and air and water quality violation notices must be reported.

The proposed rule would have required the date of issuance of the violation notice, the name of the person to whom the violation notice was issued, and the issuing regulatory authority department or agency. In the final rule, OSMRE is also requesting any identifying numbers, including the Federal or State permit number and MSHA number associated with the operation, and the dates of issuance of the violation notice and MSHA number. This additional information will assist the regulatory authority in linking a violation notice to a particular mine site and its owners and controllers.

The requirement in the prior regulations to list violation notices, including NOV's, received by any subsidiary, affiliate, or persons controlled by or under the common control with the applicant has been deleted for two reasons. First, the information concerning NOV's incurred by any subsidiary, affiliate, or persons controlled by or under common control with the applicant is not required by the Act and is not needed in view of a presumption contained in revised 30 CFR 773.15(b)(1). That presumption holds that in the absence of a failure-to-abate cessation order an NOV is presumed to be in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation. It is because of the presumption that cessation orders but not NOV's must be reported for any surface coal mining operation owned or controlled by the applicant or by any person who owns or controls the applicant. In spite of the presumption, all NOV's received directly by the applicant must still be reported under revised § 778.14(c) because section 510(c) of the Act requires that an application list all NOV's incurred directly by the applicant.

The second reason for revising the previous requirement to list violation notices "received by any subsidiary, affiliate, or persons controlled by or under the common control with the applicant" was the desire of OSMRE to eliminate confusion and conform the scope and language of the persons about whom information must be submitted with the coverage of the compliance review requirements of 30 CFR 773.15 (b)(1) and (b)(3). As revised on October 3, 1988 (53 FR 38868), those sections do not use the terms "subsidiary,"

"affiliate" or "common control." Instead they refer to operations "owned or controlled by either the applicant or by any person who owns or controls the applicant."

Section 778.14(d) of the rule requires that after a surface coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant shall, as applicable, bring up to date, correct or indicate that no change has occurred in the information previously submitted under § 778.14(c). If the applicant fails or refuses to submit the information required under § 778.14(d), the regulatory authority will not issue the permit. The updated information will enable the regulatory authority to make an accurate § 773.15(b)(1) compliance review.

Section 778.14(d) was proposed on July 16, 1986 (51 FR 25828) as § 773.15(e)(1)(ii). It has been codified in the final rule in § 778.14(d) so that the requirement to update information will be located with the requirement to provide the information that must be updated.

Section 843.11—Cessation Orders

Section 843.11(g) required that where OSMRE is the regulatory authority, within sixty days of the issuance of a cessation order, OSMRE must notify all owners and controllers identified pursuant to 30 CFR 778.13(c) that the cessation order has been issued and that they have been identified as owners or controllers of the violator.

As described earlier in this preamble, § 773.17(i) of the rule requires a permittee to submit to the regulatory authority within thirty days after a cessation order is issued, updated information on its owners and controllers. Upon receipt of this information, OSMRE will send the notification required by § 843.11(g). If updated information is not received, OSMRE will send the notice to the persons currently in its records as owners or controllers.

OSMRE has added this provision to the final rule for three reasons. First, notification to the owners and controllers will insure that they are aware of the violation, and that unless the violation is abated their names will be linked to the violation in the Applicant/Violator System. Second, where the person notified of the violation is no longer linked with the violator, notification will allow the person to immediately notify the regulatory authority that a link no longer exists. This will help prevent any problems in the future for that person should the permittee fail to submit the update information required by § 773.17(i) indicating that the link no longer exists or if it submits erroneous information. Third, where the violator is a corporation, the notification to the individual owners and controllers will also provide a basis for the assessment of an individual civil penalty under section 518(f) of the Act and 30 CFR Part 846 or the State program equivalent.

Since this section contains a procedural requirement relating to enforcement sanctions, pursuant to § 840.13(c) each state regulatory authority must adopt the same or similar requirements.

III. Discussion of Public Comments

One commenter objected to the rule on procedural grounds. The commenter said that the proposed rule was based on the April 16, 1986 (51 FR 12879) option for defining ownership and control, and not on the option published for comment on May 4, 1987 (52 FR 16275). The commenter said that the data collection requirements varied dramatically between the two proposed definitions of ownership and control, and that it was not possible for the public to comment intelligently on the agency's approach to data collection. The commenter said that this failure violated the basic tenets of the Administrative Procedure Act (APA).

OSMRE disagrees. The APA requires that an agency publish "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(3). OSMRE complied with this requirement on May 28, 1987 (52 FR 20032) when it published proposed rule language which would conform the permit application requirement in §§ 778.13 and 778.14 with the April 16, 1986 option for the definition for "owned or controlled" and "owns or controls." The requirements adopted in this rule are substantially similar to those published on May 28, 1987. The requirements published on May 28, 1987 were based on the April 16, 1986 option because the definitions discussed in that option were more inclusive than the option published on April 5, 1985 (50 FR 13724).

In the May 28, 1987 notice, OSMRE also stated that if the May 4, 1987 option for the definition were selected rather than the April 16 option, the information reporting requirements might be changed, and indicated the nature of the change and specifically requested comments on alternative reporting requirements. Thus, this rule complies with the requirements of the APA.

One commenter objected to including in the rule any provision which would require an applicant to submit any information other than that specifically required by section 507(b) of the Act. The commenter argued that since the Congress articulated, with specificity, precise permit information requirements with respect to the applicant's corporate officers and owners, it was arbitrary and capricious for OSMRE to impose more expansive information reporting requirements. In support for this position, the commenter cited In re: Permanent Surface Mining Regulation Litigation, 14 E.R.C. 1083, 1097 (D.D.C. February 26, 1980).

OSMRE disagrees. The case cited by the commenter dealt with the narrow issue of whether the Secretary of the Interior could require the submission of hydrologic information for areas outside a permit area. In its decision the court concluded that the Congress articulated, with specificity, those instances in which hydrologic information outside the permit area was necessary, and consequently the Secretary's requirements which went beyond those instances specified by the Congress were arbitrary and capricious. *Id.*

In the case of In re: Permanent Surface Mining Regulation Litigation, 653 F.2d 514 (D.C. Cir. 1981), cert. denied, 454 U.S. 822 (1981), the U.S. Court of Appeals for the District of Columbia Circuit decided the question of whether the Secretary had rulemaking authority to require a permit applicant to submit any items of information beyond those enumerated in the Act. The court held that the Act's explicit listings of permit information were not exhaustive and did not preclude the Secretary from requiring additional information needed to ensure compliance with the Act. *Id.* at 527. The court held that both sections 201(c)(2) and 501(b) of the Act provide adequate authority for the Secretary to require the submission of additional information.

Section 201(c)(2) authorizes the Secretary to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act." Section 501(b) directs the Secretary to promulgate regulations "establishing procedures and requirements for preparation, submission and approval of State programs."

In addition to the two sections cited by the court, support for the rule may also be found in sections 201(c)(1), 507(b), 510(c) and 517(b)(1)(E) of the Act. The rule aids implementing the section 102(c)(1) requirement that permits be withheld for noncompliance with the Act. Section 507(b) requires the identification of owners and controllers,

and also requests information on any suspension, revocation or bond forfeiture incurred by the applicant or any subsidiary, affiliate or person controlled by or under common control with the applicant in the five years preceding the date of the application. Section 510(c) requires a listing of all notices of violation incurred by the applicant during the three year period preceding the date of the application. Section 517(b)(1)(E) authorizes the regulatory authority to require any permittee to provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems necessary for purposes of developing or assisting in the development, administration and enforcement of any approved State or Federal program, or of determining whether any person is in violation of any requirement of any such State or Federal program. It is evident, therefore, that the Secretary has ample authority to adopt the information reporting requirements contained in this rule.

One commenter said that the final § 733.15(b)(1) compliance review required by § 773.15(e) should be limited to any new information received in the information update required by §§ 778.13(i) and 778.14(d). Presumably the comment was made out of concern that the final compliance review could delay the issuance of the permit.

OSMRE believes that the final compliance review will not be a time-consuming process. When the updated information is submitted by the applicant pursuant to §§ 778.13(i) and 778.14(d) of this rule, OSMRE or the appropriate State regulatory authority will enter the information into the Applicant/Violator System. Both the initial and the second § 773.15(b)(1) compliance review may be made using the Applicant/Violator System. Use of the computer-based system to make the review will take very little time and should not result in a delay in the issuance of the permit if the updated information does not result in a match between the applicant and a violator.

One commenter stated that a permit should be rescinded if the permittee failed to comply with the requirement of § 773.17(i) to update certain information on its owners and controllers on an annual basis. In the proposed rule OSMRE stated that failure to submit the information could result in rescission of the permit.

As previously discussed, the updating requirement in § 773.17(i) has been changed in the final rule to make it contingent upon the issuance of a cessation order. Once such a provision is incorporated into a regulatory program, if the permittee fails to furnish the required information, the permittee will have violated a permit condition and be subject to appropriate enforcement measures under the applicable regulatory program.

One commenter requested clarification concerning the requirement in § 778.13(b) to furnish the name, address and telephone number of the person who will pay the abandoned mine land reclamation fee. The commenter wanted to know if the regulation required the submission of an organization such as a bank, or the name of a particular person at the bank who would make the payments on behalf of the operator.

The term person is defined in section 701(19) of the Act to mean an individual, partnership, association, society or joint stock company, firm company, corporation or other business organization. Consequently, if a financial institution makes the required payment for the operator the name of the institution would suffice. The name of the person actually paying the abandoned mine land reclamation fee on behalf of the operator is being requested in order to facilitate requests for audits and financial information.

Several commenters objected to the requirement in § 778.13(i) and 778.14(d) of the rule for an applicant to submit updated information at the time a permit is approved but before it is issued. One commenter objected on the grounds that the Act requires that the information be submitted only once, and that the requirement to update the permit application information immediately prior to the issuance of the permit would be burdensome.

OSMRE disagrees. The commenter submitted no evidence to support the assertion that the requirement would be burdensome. The requirement could be burdensome only if numerous changes had occurred since the permit application was submitted. Where such changes have occurred in the ownership or control of the proposed mining operation or in the type and number of outstanding violations, it is only appropriate that the compliance history of the permit applicant and its owners and controllers be reviewed to insure that the permit is not issued in violation of section 510(c) of the Act.

Another commenter said that the proposed requirement to update the information in the permit application at the time of the submission of the bond would destroy the two-step process envisioned by the Act for permit issuance. The commenter stated that the decision to issue the permit should be based on the material submitted with the permit application, and the decision to accept the bond should be based on satisfaction of the bonding requirements in section 509 of the Act.

OSMRE disagrees. There is nothing in the Act to prevent the Secretary from requiring that the permit application be complete and accurate at the time of permit issuance. Clearly, it is the intent of the Congress that the permit be issued based on accurate information contained in the permit application.

Another commenter said that any delays between the submission of the permit application and the issuance of the permit were caused by the regulatory authority. Therefore, the commenter concluded, the applicant should not be required to update the information in the application.

OSMRE disagrees. Very often the delay between the time when a permit application is submitted and when the permit is issued is the result of factors such as the large size of the planned mining operation, the extent of the mining plan, requests for clarification concerning information in the permit application, or the need to prepare environmental documents. The lapse of time caused by such factors can be minimized but not entirely avoided. The only way of insuring that the permit is approved based on current information is to require that the information be updated. It is to the advantage of the permit applicant to update the information in the application in order to insure that the permit is issued based on accurate information.

One commenter suggested that the entire package of compliance information should be required only once at the time of bond submittal.

The suggestion to have the compliance information submitted only at the time the bond is submitted could delay the issuance of a permit. If the compliance information is submitted only at the time the bond is submitted, OSMRE or a State regulatory authority would not be able to conduct a compliance review until the very end of the permit application review process. By requiring the information to be submitted in the beginning, the regulatory authority is able to make an initial compliance review of the application and alert the applicant to any potential problem early enough to give the applicant sufficient time to correct it or to submit information indicating that the results of the initial compliance review were erroneous. This process should reduce or eliminate delays in the issuance of a permit. In addition, the regulatory authority's

communication with the applicant at the outset concerning any problem that could preclude permit issuance will allow the regulatory authority to avoid expending resources on technical review of a permit application until a substantial likelihood exists that withholding of the permit will not be required.

One commenter suggested that OSMRE should have the responsibility to update that information at the time of permit issuance, based upon the information contained in the original application and OSMRE records.

OSMRE disagrees. The regulatory authority cannot totally update information without assistance from the applicant because it would have no way of knowing who any new owners or controllers of the applicant may be or what new violations may exist, but have not yet been entered into the Applicant/Violator System.

One commenter objected to the rule on the grounds that it did not require sufficient information concerning the rebuttable presumptions contained in the definition of "owned or controlled" and "owns or controls". The commenter argued that the rule should require the submission of information describing the role of each officer in a company, and the legal authority and duties of each director. In effect, the commenter wanted a permit applicant to submit sufficient information to either rebut or confirm the presumptions contained in the definition of ownership and control. The commenter was concerned that if the information were submitted at the time of a permit block, the individuals linked to a violator would "come forth on a piece-meal basis with self-selected information" to rebut the presumption.

OSMRE did not adopt the commenter's suggestion. Under the definition at 30 CFR 773.5 certain relations create a presumption of ownership or control. For example, owning at least ten percent of the applicant, or being an officer, director, general partner, or operator of the applicant results in a presumption of control. However, for the purpose of processing permit applications a presumption of control is important only if there is an outstanding violation to which a shareholder, officer, director, general partner, operator or other person covered by the definition is linked. If there is a violation, then it becomes important to determine if the control presumed by the rule does not in fact exist. OSMRE believes that it would result in an unreasonable expenditure of time, effort and resources by both the regulatory authority and the permit applicant if the regulations were to require all permit applicants to submit the information needed to rebut a presumption of control if no link to a violation existed and therefore there was no reason to rebut the presumption. An applicant can always submit the information if the compliance review indicates a link between an applicant and a violator. Once the link is discovered, both the applicant and the regulatory authority can focus their attention on the specific relationship in question and will know what information is actually needed to rebut the presumption.

One commenter objected to the exception in § 778.14(c) of the rule, which does not require the permit applicant to report all notices of violation (NOV's). Section 778.14(c) requires that only NOV's incurred directly by the applicant be reported. NOV's incurred to surface coal mining and reclamation operations owned or controlled by the applicant or by anyone who owns or controls the applicant need not be reported. The commenter argued that all NOV's should be listed and that they should be taken into consideration during the compliance review because the absence of a cessation order does not indicate the absence of a violation. The commenter further argued that the receipt of an NOV serves as an important indicator of an applicant's willingness and ability to comply with necessary legal restrictions and permit requirements.

OSMRE did not adopt the commenter's suggestion that NOV's incurred by operations owned or controlled by the applicant or by anyone who owns or controls the applicant be reported. Section 778.14(c) as adopted complies with the requirements of section 510(c) of the Act. That section requires that notices of violations incurred "by the applicant" be listed. The Act does not require that notices of violations incurred at surface coal mining operations owned or controlled by the applicant or by any person who owns or controls the applicant be reported. OSMRE believes that the exception to reporting NOV's incurred by operations owned or controlled by the applicant or by any person who owns or controls the applicant is reasonable in view of the Secretary's revision of the scope of the compliance review in § 773.15(b)(1) and the presumption contained in that section that "in the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation has been or is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application."

In addition to the above, the Secretary is adding to the regulations in § 778.14(d) a new requirement. That section requires that after the approval of the permit, but before its issuance, the permit applicant must bring up to date, correct, or indicate no change has occurred in the violation information previously submitted pursuant to § 778.14(c). Consequently, any unreported NOV's which were outstanding at the time the permit application was filed, and for which a cessation order was subsequently issued prior to the issuance of the permit, would have to be reported in the information update required immediately prior to the issuance of the permit, and would result in the permit being blocked unless the violation was in the process of being abated or else was the subject of a good faith appeal, in which case the permit would be conditionally issued.

Several commenters said that the information reporting requirements of the rule would be very burdensome. As an example, one commenter said that an existing company might be required to list on a permit application the names and addresses of one direct parent company, five second generation parent corporations (none of whom were primarily engaged in coal production), and an unknown number of third generation owners holding ten percent or more of the stock of the five second generation owners; three affiliates which are coal producing companies and ten affiliates which are not; in addition to officers, directors and violations of all of the above. By the commenter's calculations, the permit applicant would be required to list information for forty-three surface coal mining operations in ten States.

OSMRE is aware that for some large corporations the reporting requirements of this rule could be extensive. After the initial compilation of such material, however the incremental amount of effort to maintain and update the data for future applications would be less than the initial effort. These requirements are well within the discretion granted to the Secretary by the Act and are necessitated by the complex business structures created by companies mining coal.

One commenter disagreed with OSMRE's determination that the time and effort required to fulfill the data collection requirements of this rule would be minimal. The commenter said that the operating costs, time and effort involved in complying with the rule

would have a substantial impact on all companies regardles of size. The commenter said that the annual updating of permit information could easily require an additional man-year or more to track all corporate personnel changes and violations and their ultimate resolution.

OSMRE's determination of the impact of the rule was based on calculations contained in its Determination of Effects, which indicates that in 1985, 73.4% of all operations could be classified as small operations. The result would be that most operations would not need much time to gather, organize and mail information required under the rule. The commenter did not submit any evidence to support the assertion that one man-year or more would be required. Moreover, the commenter said that many companies have already developed their own computerized data processing systems to track some of the required information. This should minimize any increase in burden that might result. Also, in order to address concerns about the information reporting requirements, OSMRE did not adopt an annual update. Instead, updated information is required only after a cessation order is issued. Thus companies acting in compliance with their permits, or who abate violations within the time specified in a notice of violation can avoid having to submit updates of ownership and control information.

One commenter said that the regulatory authority should collect ownership information up and down the corporate chain. The commenter stated that requiring such information will not place a burden on coal companies because this data should be readily available in coal company records.

OSMRE agrees that such information must be submitted in a permit application. The rule requires the submission of information on owners and controllers of the permit applicant as well as mining operations owned or controlled by the applicant. See § 778.13 (c) and (d) of the rule and the preamble discussion of those two sections.

One commenter asked for clarification of how OSMRE would determine control based on indirect ownership. For an example and discussion of indirect ownership, see the OSMRE final rule defining "owned or controlled" and "owns or controls," published on October 3, 1988 (53 FR 38868) at page 38874.

One commenter objected to the requirement in § 778.13(j) for the use of a standard form to report the information required by this rule because it could cause additional burdens for the many companies that have already developed their own data processing systems to track some of the required information.

OSMRE believes that use of a standard form to report the information required by this rule can assist those applying for a permit application by indicating on the face of the form what information they must submit with regard to the identification of interests and violation history. Also, the use of a standard form can assist OSMRE and the State regulatory authorities in entering the information from the permit application into the Applicant/Violator System and minimize the amount of data entry error that might result. Any additional burden the use of a standard form might impose would be offset by these important advantages.

One commenter said that a permit applicant should be required to list all violations for which a permit block can be imposed.

OSMRE disagrees. While it is true a permit block can be imposed for violations an applicant is not required to list, OSMRE does not believe that it is necessary for the permit applicant to submit all of the information for which a permit block may be imposed because much of the information already is available to OSMRE and the State regulatory authorities. Final § 778.14(c) and the existing regulations in § 778.13 (a) and (b) together require the submission of most of the information suggested by the commenter, with the exception of outstanding Federal and State civil penalties and delinquent AML fees.

With regard to outstanding Federal civil penalties and delinquent AML fees, OSMRE has two computer-based systems which supply Federal violation data to the Applicant/Violator System. One is the Collection Management Information System (CMIS), and the other is the Abandoned Mine Land Fee Collection System (AML System). CMIS contains information on all delinquent Federal civil penalties while the AML System contains information on delinquent AML fees. With regard to delinquent State civil penalties, OSMRE intends to collect the relevant data and add it to the Applicant/Violator System at a later date after the quality of the data has been checked.

One commenter suggested that the rule should include a general provision which requires ownership and control information for anyone in an ownership or control relationship with the applicant or operator. For example, the commenter said, family members are frequently used as shams or fronts by irresponsible coal operators, and it would be a minimal burden to the applicant and the operator to list immediate family members who have mined in the past five years. The commenter also suggested that information be requested on mine managers, subcontractors and mine foremen.

OSMRE did not adopt the commenter's suggestion. The final rule at § 778.13(c) requests information for any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5. Under § 778.13(c) the permit applicant is required to list the operator and those who own or control the operator.

If a family member, mine manager or subcontractor controls the applicant, there is an obligation under §§ 778.13(c) and 773.5(a)(3) to list that person in the permit application. However, the rule does not specifically require information when control does not exist. First, the Act does not require OSMRE to collect such information, and second, the Congress has imposed limitations on information collection. OSMRE, like all other Federal agencies, is required by the Congress to reduce where possible the information collection burden it imposes on the public. In order to do this OSMRE has limited the information reporting requirements of this rule to those specifically required by the Act or clearly necessary for the compliance review required by 30 CFR 773.15(b). There has to be some reasonable limit on the information collected for the compliance review. If OSMRE were to request all data which may be useful but not essential for performing the compliance review, the data when added to that already required by other sections of the Act and regulations would be difficult and expensive to process for both the permit applicant and the regulatory authority.

The regulations at 30 CFR 773.13(b) allow for public participation in the permitting process. Through that process, the regulatory authority can receive, and often does receive, pertinent information about the permit applicant and its owners and controllers, which may affect the permitting decision.

One commenter said that there should be a specific requirement for the applicant to state whether the proposed operation is a contract mine, and if so, the applicant should be required to list the entity or entities involved in that relationship. The commenter stated that ownership and control information should be required for both parties to the contract, and a copy of the contract should be required as part of the permit

application, If the contract is oral, its basic provisions should be described in the application.

OSMRE agrees in part. The rule in § 778.13(c) requires that the permit application contain the name of any person owning or controlling coal to be mined under the proposed permit under a lease, sublease or other contract, and having the right to receive such coal after mining or having authority to determine the manner in which the proposed surface coal mining operation is to be conducted. Section 778.13(e) requires that the permit application contain the name and address of each legal or equitable owner of record of the mineral property to be mined and each leaseholder of record of any leasehold interest in the property to be mined. Consequently, with the exception of the terms of the contract, information concerning the parties to a contract mining operation, where control is presumed, is required by the rule. Information on the contracts of other mines is not needed unless the contracts result in control over the mines. Although the submittal of every contract would reduce the likelihood of the regulatory authority not discovering control relationships, a requirement for applicants to submit and regulatory authorities to review such information appears overly burdensome.

Under the definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5, there is a presumption of control for any person who owns or controls coal to be mined by another person under a lease, sublease or other contract and has the right to receive this coal after mining or has authority to determine the manner in which the other person mines the coal. If a presumption of control exists in a particular permitting situation, the permit applicant may rebut the presumption if the compliance review indicates a link between the applicant and the violator. In order to rebut the presumption in a contract mining situation, the applicant would be required, at a minimum, to submit the terms of the contract for examination. OSMRE does not believe that it should require the submission of the contract until such time as there is a need to rebut the presumption of control because of a potential permit block.

The same commenter also wanted the permit application to contain information on past contract mining operations of the applicant and operator along with the permit number, Mine Safety Health Administration (MSHA) number, and any outstanding violations.

OSMRE agrees in part with the commenter. This information with regard to past contract mining operations owned or controlled by the applicant is required by the rules in §§ 778.13(c)(4) and 778.14(c)(1).

One commenter suggested that previous § 778.14(c) should be retained without change. Prior to revision, § 778.14(c) required information on violation notices received by the applicant or any subsidiary, affiliate or persons controlled by or under common control with the applicant. As revised, § 778.14(c) requires information on violation notices received by the applicant or any surface coal mining operation owned or controlled by the applicant or by anyone who owns or controls the applicant.

OSMRE declined to adopt the commenter's suggestion. The language adopted in § 778.14(c) mirrors the language in 30 CFR 773.15(b)(1) governing compliance review. The language is no less inclusive than the compliance review required by section 773.15(b)(1), and in fact results in a review of companies under common control with the applicant. Use of this same terminology in both §§ 778.14(c) and 773.15(b)(1) will eliminate confusion.

One commenter stated that § 778.14(c) of the rule should require the applicant to include the status of any violation. This information is already required by § 778.14(c)(4) of the existing regulations.

One commenter also suggested that the permittee be required to submit updated information on an annual basis concerning all outstanding violations previously reported pursuant to § 778.14(c).

OSMRE disagrees. The violation information submitted with the permit application is needed for the compliance review required by § 773.15(b)(1). Once that review has been completed and the permit issued an update is not needed because any violation which occurs after the issuance of a permit will not affect the validity of the permit, and any violation which has already been reported pursuant to § 778.14(c) will remain in the records of the regulatory authority until the violation is abated.

One commenter requested clarification of the responsibility of the regulatory authority with regard to verifying the information supplied by the permit applicant or challenging any information the regulatory authority has reason to believe may be incorrect.

The regulatory authority may independently verify the information contained in a permit application if it has reason to believe that the information is either inaccurate or incomplete. If the regulatory authority determines that the permit application is inaccurate or incomplete it may refuse to process the application until the missing information is submitted, or it may block the permit because of a violation or an ownership or control relationship discovered as a result of its own investigation. In either event, the regulatory authority should notify the permit applicant to submit additional information, which may indicate that the application is in fact accurate and complete or that a permit should be issued because there is no ownership or control link between the applicant and the violator. After such notice, the burden to respond is on the applicant.

One commenter suggested that the permittee be required to update the information at midterm review rather than on an annual basis, and to make any other updates only if changes occur. Another commenter suggested that updates be made only at the time of permit revision.

OSMRE did not adopt these suggestions. As previously discussed, the final rule requires a permittee to update the information contained in the permit application within thirty days of the issuance of a cessation order for the permitted site. OSMRE believes that it will be more advantageous to request the information at the time of a violation rather than on an annual basis. If no violation has occurred at midterm, there is no need for an information update. If a violation has occurred prior to an application for a permit revision, then the updated information is needed so that appropriate alternative enforcement action may be taken if necessary.

IV. Procedural Matters

Effect in Federal Program States and on Indian Lands

The rule will apply through cross-referencing to the following Federal program States: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. Comments were specifically solicited in the proposed rule as to whether unique conditions existed in any of these States relating to the proposal which should be reflected in the final rule either as changes to the national rules or as State-specific amendments to any or all of the Federal programs. No comments were received.

The rule also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750.

Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of the Act to determine any changes in these programs that will be necessary. When the director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provision of 30 CFR 732.17.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.*, and assigned clearance numbers 1029–0034 and 1029–0041.

The public reporting burden for this information is estimated to average one hour per response for § 773.17(i), and 13.5 hours per response for the sections located in Part 778 amended by this rule. The estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029–0034), Washington, DC 20503.

The information is needed to meet the requirements of sections 201, 507 and 510 of Pub. L. 95–87. The information will be used by OSMRE in reviewing and approving permit applications. Except for the disclosure of a social security number, the obligation to respond is mandatory in accordance with sections 201(c)(1), 201(c)(2), 501(b), 507(b), 510(c) and 517(b)(1)(E).

Executive Order 12291

The Department of the Interior has examined the rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. This determination is based on the findings that the regulatory revisions and additions of this rule will cause very little increase in the costs of operating a mine in a manner that meets the requirements of the Act. Further, there will be no significant impacts on competition, employment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities because although the rule will impose new regulatory burdens on small entities, the time and effort required for a small entity to fulfill the additional data collection requirements will be minimal.

National Environmental Policy Act

The rule has been reviewed by OSMRE and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Department of the Interior Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

Author

The principal author of this rule is Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–5241 (Commercial or FTS).

List of Subjects

30 CFR Part 773

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 778

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 773, 778 and 843 are amended as set forth below.

Date: December 8, 1988.

James E. Cason,

Deputy Assistant Secretary—Land and Minerals Management.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

1. The authority citation for Part 773 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*, 16 U.S.C. 470aa *et seq.*, and Pub. L. 100–34.

2. Section 773.15 is amended by adding paragraph (e) to read as follows:

§ 773.15 Review of permit applications.

* * * * *

(e) *Final compliance review.* After an application is approved, but before the permit is issued, the regulatory authority shall reconsider its decision to approve the application, based on the compliance review required by paragraph (b)(1) of this section in light of any new information submitted under §§ 778.13(i) and 778.14(d) of this chapter.

3. Section 773.17 is amended by adding paragraph (i) to read as follows:

§ 773.17 Permit conditions.

* * * * *

(i) Within thirty days after a cessation order is issued under § 843.11 of this chapter, or the State program equivalent, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect the permittee shall either submit to the regulatory authority the following information, current to the date the cessation order was issued, or notify the regulatory authority in writing that there has been no change since the immediately preceding submittal of such information:

(1) Any new information needed to correct or update the information previously submitted to the regulatory authority by the permittee under § 778.13(c) of this chapter; or

(2) If not previously submitted, the information required from a permit applicant by § 778.13(c) of this chapter.

PART 778—PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

4. The authority citation for Part 778 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

5. Section 778.10 is revised to read as follows:

§ 778.10 Information collection.

The information collection requirements contained in Part 778 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0034. The information is being used to meet the requirements of sections 201, 507(b), 508(a), and 510(c) of the Act, which require that persons conducting surface coal mining operations submit to the regulatory authority relevant information regarding ownership and control of the property to be affected by such operations, compliance status and history. This information will be used by the regulatory authority to insure that all legal, financial and compliance requirements are satisfied prior to making a decision to issue or deny a permit under the permanent regulatory program. Except where specifically noted, the obligation to respond is mandatory in accordance with sections 201(c)(1), 201(c)(2), 501(b), 507(b), 510(c), and 571(b)(1)(E).

6. Section 778.13 is amended by revising the introductory text and paragraphs (b), (c) and (d), and by adding paragraphs (i) and (j) to read as follows:

§ 778.13 Identification of interests.

An application shall contain the following information, except that the submission of a social security number is voluntary:

* * * * *

(b) The name, address, telephone number and, as applicable, social security number and employer identification number of the:

(1) Applicant;

(2) Applicant's resident agent; and

(3) Person who will pay the abandoned mine land reclamation fee.

(c) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in § 773.5 of this chapter, as applicable:

(1) The person's name, address, social security number and employer identification number;

(2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(3) The title of the person's position, date position was assumed, and when submitted under § 773.17(i) of this chapter, date of departure from the position;

(4) Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and

(5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any State in the United States.

(d) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in § 773.5 of this chapter, the operation's:

(1) Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(2) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

* * * * *

(i) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under paragraphs (a) through (d) of this section.

(j) The applicant shall submit the information required by this section and by § 778.14 of this part in any prescribed OSMRE format that is issued.

7. Section 778.14 is amended by revising the introductory text, the introductory text to paragraph (c), and paragraph (c)(1) and by adding paragraph (d) to read as follows:

§ 778.14 Violation information.

Each application shall contain the following information:

* * * * *

(c) For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(1) Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

* * * * *

(d) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this section.

PART 843—FEDERAL ENFORCEMENT

7. The authority citation for Part 843 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 et seq., and Pub. L. 100–34.

8. Section 843.11 is amended by adding paragraph (g) to read as follows:

§ 843.11 Cessation orders.

* * * * *

(g) Where OSMRE is the regulatory authority, within sixty days after issuing a cessation order, OSMRE shall notify in writing any person who has been identified under §§ 773.17(i) and 778.13 (c) and (d) of this chapter as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

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March 2, 1989

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Fee Schedules for Radiologist Services; Interim Rule with Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-478-IFC]

Medicare Program; Fee Schedules for Radiologist Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim rule with comment period.

SUMMARY: As required by section 4049 of the Omnibus Budget Reconciliation Act of 1987, this interim rule with comment period sets forth the relative value scale and the methodology for determining fee schedules upon which Medicare Part B payment for radiologist services will be determined. This method of payment will be implemented for services furnished on or after April 1, 1989.

DATES: Effective Date: The amendments to the Code of Federal Regulations are effective April 1, 1989. By statute, the fee schedules (which are not published in the Code of Federal Regulations) are effective for services furnished on or after January 1, 1989. Initial implementation of the fee schedules will be for services furnished on or after April 1, 1989.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on May 1, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-478-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-478-IFC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: William Morse, (301) 966-4520.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, under the provisions of sections 1833 and 1842 of the Social Security Act (the Act), payment for most physician and other medical and health services furnished under Part B of the Medicare program (Supplementary Medical Insurance) is made on a reasonable charge basis through contractors known as carriers. There are some exceptions to the rule of Part B payments made on a reasonable charge basis such as hospital outpatient services, which are usually reimbursed on a reasonable cost basis, and diagnostic laboratory services, which are reimbursed on a fee schedule basis.

In accordance with section 1842(b)(3) of the Act, when payment is made on a charge basis, the charge must be reasonable. In determining the reasonableness of a physician's charge for Medicare purposes, carriers are required to consider the following factors and, in general, payment for the physician services is to be based on the lowest of these factors:

- The actual billed charge for the service.
- The customary charge for similar services generally made by the physician for the service.
- The prevailing charge in the locality for similar services.

After adjustment for the annual deductible amount, Medicare pays 80 percent of the reasonable charge. The rules governing payment of reasonable charges for Medicare Part B services are set forth in Part 405, Subpart E (§§ 405.501 through 405.580).

II. Summary of New Legislation

Section 4049(a)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), which was enacted on December 22, 1987, amended section 1833(a)(1) of the Act by adding a new subparagraph (J) to require that, effective with services furnished on or after January 1, 1989, radiologist services are reimbursed at 80 percent of the lesser of the actual charge for the services or the amount set under a radiology fee schedule. Section 4049(a)(2) of Pub. L. 100-203 added a new section 1834(b) to the Act to provide for the development of a fee schedule for radiologist services. Section 411(f)(8) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) enacted on July 1, 1988, made several amendments to section 4049(a)(2) of Pub. L. 100-203, and those changes are incorporated in our discussion below. Section 1834(b) of the Act provides for the following:

- Section 1834(b)(1)(A) of the Act requires the Secretary to develop a relative value scale to serve as the basis for payment for radiologist services. Using this relative value scale and appropriate conversion factors, the Secretary is required under section 1834(b)(1)(B) of the Act to develop fee schedules (on either a regional, statewide, or carrier service area basis) for payment for radiologist services under Medicare Part B. The fee schedules are to be implemented for those services furnished during 1989.
- Section 1834(b)(2) of the Act requires the Secretary, in developing the relative value scale and fee schedules, to consult closely and regularly with the Physician Payment Review Commission, the American College of Radiology (ACR), and other organizations representing physicians and suppliers who furnish radiologist services. The Secretary is required to share with these organizations the data and data analysis being used to make the determinations in developing the relative value scale and fee schedules, including data on variations in current Medicare payments by geographic area and by service and physician specialty.
- Under section 1834(b)(3) of the Act, the Secretary must, in developing the relative value scale and fee schedules, consider variations in the cost of furnishing radiologist services among geographic areas and any different sites of service. The Secretary may also consider other factors concerning the manner in which physicians in different specialties furnish these services to ensure equitable payment amounts and to promote effective and efficient provision of radiologist services by physicians in different specialties.
- Section 1834(b)(4) of the Act requires that the Secretary develop preliminary fee schedules for 1989 that are budget neutral; that is, the preliminary fee schedules are designed to result in the same amount of aggregate payment (net of coinsurance and deductible amounts) for radiologist services in calendar year 1989 as would have been made absent the enactment of section 4049 of Pub. L. 100-203. However, the fee schedules that are established for actual payment purposes for radiologist services furnished in 1989 must be 97 percent of the amounts established in the preliminary fee schedules. The fee schedules that will be effective in years subsequent to 1989 will be equal to the previous year's fee schedule updated by the percentage increase in the Medicare Economic Index (MEI). In addition, each fee schedule is required to provide that the

payment rate for nonparticipating physicians and suppliers is equal to the appropriate percent (as defined in section 1842(b)(4)(A)(iv) of the Act) of the payment rate recognized for participating physicians and suppliers.

• Section 1834(b)(5) of the Act requires that the actual charge made by a nonparticipating physician or supplier for a radiology service that is paid on the basis of a radiology fee schedule be limited as follows:

—In 1989, the charge must be no more than 125 percent of the applicable fee schedule amount for the service.
—In 1990, the charge must be no more than 120 percent of the applicable fee schedule amount for the service.
—In years subsequent to 1990, the charge must be no more than 115 percent of the applicable fee schedule amount for the service.

If a physician or supplier knowingly and willfully bills in excess of these amounts, the Secretary may impose sanctions against the physician or supplier in accordance with section 1842(j)(2) of the Act, with the sanctions set forth in that section applying to suppliers in the same manner as those sanctions apply to a physician. (A separate rulemaking document addressing these sanction and penalty provisions will be developed by the Office of Inspector General.)

• Section 1834(b)(6) of the Act defines radiologist services as radiology services performed by, or under the direction or supervision of, a physician who is certified or eligible to be certified by the American Board of Radiology, or for whom radiology services account for at least 50 percent of the total amount of charges made by the physician for Medicare Part B services.

III. Consultation Requirements

In accordance with the provisions of section 1834(b)(2) of the Act, we have consulted with interested organizations in the preparation in this interim rule. As a part of this process, we shared data on draft conversion factors and a national relative value scale with the American College of Radiology (ACR), the Physician Payment Review Commission, the American Osteopathic Association, and other interested organizations. The ACR developed its own relative value scale, which it shared with us. As discussed below in more detail, we have decided to adopt the ACR's relative value scale for determining the radiology fee schedules.

IV. System of Coding

To facilitate the reporting of items and services provided to Medicare beneficiaries and the processing of claims for those items and services, codes are used in lieu of narrative descriptions. For purposes of the radiology fee schedules, radiology services will be defined by codes contained in the HCFA Common Procedure Coding System (HCPCS). HCPCS was developed to satisfy the operational needs of the Medicare and Medicaid fee-for-service reimbursement programs and to ease communication between them by replacing various uncoordinated systems with a single national coding system. HCPCS is based upon the American Medical Association's (AMA) *Physicians' Current Procedure Terminology, Fourth Edition* (commonly referred to as CPT–4). In addition to CPT–4, HCPCS contains codes and modifiers developed by other professionals and insurers to meet their reporting needs as well as the codes developed by HCFA, State agencies, and Medicare contractors to meet the claims processing needs of the Medicare and Medicaid programs. While the coding system is designed to improve the ability of the physicians and suppliers to communicate the services they furnish, more importantly, the codes offer a degree of specificity and uniformity that permits a uniform application of HCFA coverage and payment policies.

HCPCS is designed with three levels of codes and modifiers. There is an upward progression of these codes from the lowest level (local assignment) to the highest level (national assignment) with HCFA and other third parties monitoring the entire system to ensure uniformity. The first level (national assignment) contains only the AMA's CPT–4 codes. These codes are all five-digit numeric. The AMA maintains responsibility for this level of codes. The second level contains the codes for physician and nonphysician services that are not included in CPT–4, (for example, ambulance, durable medical equipment, orthotics and prosthetics). These codes are alpha-numeric and are maintained jointly by HCFA, the Blue Cross and Blue Shield Association, and the Health Insurance Association of America. The third level (local assignment) contains the codes for services needed by the individual carrier or State agency to process Medicare and Medicaid claims. These codes are used for services that are not contained in either of the first two levels. The local codes are also alpha-numeric, but are restricted to the code ranges beginning with W, X, Y, and Z. These codes are used for items and services not having the frequency of use, geographic distribution, or general applicability to justify a code assignment at a higher level.

V. Provisions of the Interim Rule

In order to implement the provisions of section 4049 of Pub. L. 100–203, we are adding new §§ 405.530 through 405.533 to the regulations to provide for the following:

A. Effective Date

Initially we have decided to implement this interim rule for services furnished on or after April 1, 1989, instead of the statutory effective date of January 1, 1989. This delay is necessary because of unexpected problems in calculating budget neutral conversion factors, which prevented publication of this rule before January 1, 1989. If the statutory effective date remains unchanged, we plan eventually to apply the fee schedule to services between January 1 and March 31, 1989. We will announce such a plan in the **Federal Register.**

B. Applicability

Effective with services furnished on or after April 1, 1989, Medicare Part B payment for radiologist services will be equal to 80 percent of the lesser of—

• The actual charge for the service; or
• The amount set under the applicable radiology fee schedule.

In accordance with section 1834(b)(6) of the Act, radiologist services are defined as radiology services performed by or furnished under the supervision of a physician who—

• Is certified by or eligible to be certified by the American Board of Radiology (ABR); or
• Bills at least 50 percent of his or her total amount of charges for Medicare Part B services for radiology services.

If a radiology service is performed by or under the supervision of a physician who does not meet either of these two requirements, the usual Medicare reasonable charge method of payment will apply. Thus, in order for the fee schedule to apply to a service, the service must meet both the following criteria: (1) The service must be a radiology service; and (2) the service must be provided by or supervised by an ABR-certified or ABR-eligible physician or by a physician with at least 50 percent radiology service charges.

C. Definition of Radiology Services

For purposes of the radiology fee schedules, the following services are defined as radiology services:

• Services represented by level I HCPCS "Radiology procedure codes

(that is, codes beginning with the number 7) from CPT–4.

• Services represented by level II HCPCS codes that begin with "R", including R0070—Transporting of portable X-ray equipment.

• Services represented by level III (local assignment) HCPCS radiology codes.

In defining radiology services, we considered prohibiting the use of any level III (local assignment) HCPCS codes by the carriers. In fact, carriers were advised in September, 1988 to convert any of their level III codes for radiology services to CPT–4 or level II alpha-numeric codes by January 1, 1989 so that the services requested by those codes would be subject to national relative values. However, many of the carriers objected to the total elimination of all local radiology codes and requested that we reconsider our decision. In support of their request, the carriers identified a number of local codes for which there are no appropriate CPT–4 or level II alpha-numeric codes.

We have accepted the carriers' recommendation and will include level III (local assignment) HCPCS codes in our definition of radiology services. These codes will be paid based on local relative values as described below in section V.E.1 of this preamble. We expect that the number of local codes will be small and that those carriers that were able to convert many of their local codes to CPT–4 or level II alpha-numeric codes, will leave those conversions in place. we have begun to review all of the remaining local codes in use by the carriers and hope to further reduce their use through the conversion to an existing code or the assignment of a national CPT–4 or alpha-numeric code where appropriate.

D. Services Not Included in the Fee Schedule

1. Visit and Consultation Services

We are not including the visit and consultation services defined by the codes in the Medicare section of CPT–4 on the radiology fee schedule. We considered including these services when they are performed by radiologists because, in those cases, the services would often be related to the performance of radiology procedures. However, if we were to consider visits and consultations to be "radiology services," it could result in many internists and family practitioners being included as "radiologists" because of the "at least 50 percent of charges" criterion. Although these visits and consultations would not usually be related to radiology, if we were to view visits and consultations to be radiology services, then these physicians and our payment to them for visits and consultations would be subject to the radiology fee schedule. We do not believe that this result was intended by Congress in enacting section 4049 of Pub. L. 100–203. In 1985, radiologists performed less than 1 percent of the total number of any single visit code and no more than five percent of any single consultation service.

Moreover, when ranked by allowed charges, only one visit or consultation service falls within the top 100 services furnished by radiologists. That service is comprehensive consultation (CPT–4 code 90620) and its 1985 allowed charges were $4.7 million. The top 100 services represent approximately 80 percent of the $1.6 billion in allowed charges for radiologists in 1985. Therefore, only a small percentage of dollars paid to radiologists are for visit and consultation services. For these reasons, we are providing that visit and consultation services performed by radiologists continue to be paid for on a reasonable charge basis.

2. Codes for Injection Procedures

We are not including the codes for injection procedures associated with interventional radiology procedures or diagnostic studies as radiology services on the radiology fee schedule. We do not consider "injection-only" codes to be radiology services since they generally describe services performed by physicians other than the radiologists performing the associated radiology service. Further, codes for these separate injection procedures are not listed in the "Radiology" section but rather in the "Surgery," section of CPT–4. The performance of a given diagnostic radiology study may be coded with either a single code from the Radiology section for the complete procedure or with two codes—one for "injection only" from the Surgery section and one for "supervision and interpretation only" from Radiology section. The CPT–4 definitions for "complete" and "supervision and interpretation only" services are as follows:

• Complete Procedures: If a single physician performs an international radiology procedure or diagnostic study involving injection of contract media and all usual preinjection and postinjection services are included, then the service is designated as a "complete procedure." A complete procedure includes injection of the necessary local anesthesia, placement of needle or catheter, injection of contrast media, supervision of the study, and interpretation of results.

• Supervision and Interpretation Only: If an interventional radiology procedure or diagnostic study is performed by a radiologist-clinician team, the study service is designated as "supervision and interpretation only" code. This supervision and interpretation only code is used only when a procedure is performed by more than one physician, for example, a radiologist-clinician team.

Numerous CPT–4 codes in the Surgery section describe only the injection of contrast media, or the introduction of a catheter. For example, the narrative for CPT–4 code 21116 is "injection procedure for temperomandibular joint arthrography." The narrative for CPT–4 code 36100 is "introduction of needle or intracatheter, carotid or vertebral artery." These codes generally describe the services of a surgeon assisting a radiologist in the performance of an arthrogram and artheriogram respectively. If the "complete" radiology service is billed, no payment for the injection-only procedure code is made, because payment for the complete procedure includes payment for the injection procedure.

Both the "supervision and interpretation only" and "complete" radiology services will be included on the radiology fee schedule. Thus, to the extent that injections are included in the complete procedure, they are encompassed in payment for the complete procedure under the fee schedule.

3. Procedures Requiring Radiologic Guidance

Some CPT–4 codes in the Radiology section represent the performance of surgical procedures under radiologic guidance; that is, they include both the radiologic guidance as well as the performance of the actual procedure. These radiology codes are generally listed as "complete procedure". Other radiologic guidance procedure codes involve only radiologic guidance, and the procedure for which the guidance is provided is coded and billed separately (usually by a surgeon). These radiology codes are generally listed as "supervision and interpretation only".

When a surgical procedure is performed under radiologic guidance by a radiologist-clinician team, the surgical procedure itself is not considered to be a radiology service and is therefore not included on the radiology fee schedule. Only the radiologic guidance itself (as described by the appropriate "supervision and interpretation" code is included on the fee schedule. However, if the surgical procedure is performed

under radiologic guidance by a single physician, then it is coded as a "complete procedure" and is included on the fee schedule. For example, if fluid is removed by a surgeon from a patient's chest cavity through a needle inserted under ultrasonic guidance provided by a radiologist, the surgeon bills for his service under code 32000, "Thoracentesis, puncture of pleural cavity for aspiration" and the radiologist bills under code 76934, "Ultrasonic guidance for thoracentesis; supervision and interpretation only". Code 32000 will not be on the radiology fee schedule because it is considered to be a surgical procedure. Code 76934 will be on the radiology fee schedule because it is a radiology service. If, however, the radiologist performs the thoracentesis alone under radiologic guidance then he would bill under code 76935, "Ultrasonic guidance for thoracentesis; complete procedure." Code 76935 will also be on the radiology fee schedule because it too is a radiology service.

We note, however, that there are some procedures in CPT–4 that include radiology services that will not be included as radiology services on the fee schedule because they are frequently performed by nonradiologists and they are listed outside of the Radiology section of CPT–4 (for example, codes 43260 through 43272). We invite public comment on the appropriateness of excluding these codes from the fee schedule.

E. Physicians and Suppliers Subject to the Fee Schedule

We will apply the fee schedule when paying any claim for radiology services submitted by the following:

- Physicians who have identified themselves as radiologists to Medicare carriers.
- Physicians whose charges for radiology services are at least 50 percent of their total charges for Medicare Part B services.
- Hospitals billng for the services of hospital-based physicians.
- Multispecialty clinics listed under the HCFA Part B Medicare Annual Data System (BMAD) specialty 70.
- Portable x-ray suppliers listed under HCFA BMAD specialty 63.
- Any other supplier or nonphysician entity.

A physician has identified himself or herself as a radiologist if the carrier reports that physician's charges in the BMAD system under specialty 30 (radiology), specialty 31 (roentgenology, radiology—osteopaths only), specialty 32 (radiation therapy—osteopaths only), or specialty 36 (nuclear medicine).

Carriers will be required to review the bills submitted by all physicians in their areas for the 1989 charge year (that is, July 1, 1987 through June 31, 1988) in order to determine which of them meet the "at least 50 percent of charges" criterion.

A physician or other entity may rebut the application of the fee schedule. For example, a physician may demonstrate that although he or she is a radiologist on the carrier's file, he or she is not ABR-certified or ABR-eligible. Similarly, a clinic or portable x-ray supplier billing for a technical component radiology service may demonstrate that the physician who furnished or supervised the service was not ABR-certified, ABR-eligible, or did not meet the at least 50 percent of charges criterion. (In order to be covered by Medicare, such technical component services must be furnished under the supervision of a physician (section 2070 of the Medicare Carriers Manual (HCFA Pub. 14)).)

A BMAD specialty 70 clinic or a hospital may demonstrate that a physician other than an ABR-certified, ABR-eligible, or at least 50 percent radiology-billing physician furnished or supervised a radiology service for which the clinic or hospital is billing and thereby exempt the claim from the fee schedule.

Carriers will be required to review the status of physicians for the purpose of determining whether they are subject to the radiology fee schedule only at the time of the annual fee screen update. (Update screens are prepared in the fall of each year and are effective on the following January 1.) At that time, carriers will determine which physicians continue to identify themselves as radiologists or specialty 70 clinics and which physicians continue to meet the at least 50 percent of charges criterion.

Carriers will make their determinations based on the most recent charge year data. The carrier will then decide whether the physician will be paid under the fee schedule for the upcoming calendar year. Carriers will make this determination for any entity that receives payment for services under Medicare Part B at the time of the update. Both in the initial year and in subsequent years, physicians and suppliers whose bills are to be subject to the fee schedule will be permitted to rebut the carrier's assumption that the radiology services being billed were furnished directly or under the supervision of an ABR-certified or ABR-eligible physician or a physician that meets the at least 50 percent of charges criterion.

A new physician who identifies himself or herself to the carrier as a radiologist and who begins practice after an annual fee screen update and, thus, after the latest radiology status review, will, from the outset, be paid under the fee schedule. The status of these physicians will be reviewed with the status of other physicians at the time of the next fee screen update. A new physician who does not identify himself or herself as a radiologist will be paid on a reasonable charge basis and the physician's status will be subject to review at the time of the next annual fee screen update.

As is true for other physicians, a new physician may rebut the carrier's determination that the physician's billings are subject to the fee schedule. For example, a new physician filing as a radiologist may indicate to the carrier that he or she furnishes the radiology services for which he or she bills but that he or she is not certified or eligible to be certified by the ABR.

Any physician not subject to the fee schedule because of not being identified as a "radiologist" or not meeting the at least 50 percent of charges criterion may nevertheless demonstrate to the carrier that he or she should be subject to the fee schedule. For example, such a physician may be an ABR-certified physician who is not listed as a radiologist with the carrier.

F. Development of the Fee Schedules for Radiologist Services

As required by section 1834(b)(1) of the Act, the fee schedule for radiologist services will be based on a relative value scale and appropriate conversion factors.

1. Development of a Relative Value Scale

Section 1834(b)(1)(A) of the Act requires that, as a first step in developing radiology fee schedules, we develop a relative value scale for radiologist services. In accordance with Congressional intent, we are providing a national relative value scale that will be uniform across the country. (See H.R. Rep. No. 391, 100th Cong., 1st Sess. 397 (1987).)

We had developed, based on 1986 BMAD data, a charge-based national relative value scale. It established relative values for professional services by computing the national average submitted charge for each service and weighting the services in relation to each other, based on those national average charges. Consistent with our regulations (§ 405.555(c)(2)), our charge-based relative value scale valued the professional service at 40 percent of the global service. This was accomplished

by making the global value 2.5 times the professional value.

However, the national relative value scale that we have adopted, and that is published as Appendix A of this interim rule, was developed by the ACR. It is based on extensive data, including the following:

- A national charge survey sent to more than 3,000 radiology practices.
- A "magnitude estimation" survey sent to more than 2,000 radiologists. (Magnitude estimation is a technique for providing comparisons about a subjective dimension, such as the level of technical skill needed to perform a procedure.)
- A survey of technical component costs.
- Meetings of consensus panels that used the survey results and judgments of the survey results in arriving at the values proposed by ACR.

According to ACR, its panels were composed of members from academic and nonacademic settings, geographic areas throughout the country, all radiology specialty organizations, and all subspecialties of radiology, as well as representatives from the College of Nuclear Physicians, the Society of Nuclear Medicine, and the American Osteopathic College of Radiology.

We believe it is appropriate to adopt the ACR relative value scale, rather than the charge-based scale that we developed. As noted above, the ACR methodology appeared to be thorough and inclusive of a wide range of interests and views and represents a refinement to the charge-based relative value scale. Appendix C of this interim rule compares the separate sets of values for certain high-volume procedures.

We have accepted ACR's relative values for all services except angiography and interventional radiology. ACR's recommendations for global values for most angiography and interventional radiology codes exceeds ACR's charge-based values for these two types of codes by more than two to one. For all other categories of services, this is not the case. Because of this apparent discrepancy, and because of the low volume of office-based or global angiography, we are not adopting ACR's global relative values for any angiography and interventional radiology. Instead, these services will be paid for under locally-established global relative values. The angiography and interventional codes to be paid based on local global relative values are listed in Appendix B to this interim rule.

Additional services, such as the level II "RHCPCS" codes, level III local codes and services described by any new CTP-4 codes will also be paid based on local relative values. This is because there are no current national relative values for those services. (See Appendix B.) Carriers will establish local values based on advice from their medical directors and the relationships between charges and allowances for various services. We will review the local relative values established by carriers to ensure that those values are reasonable.

We are aware that another recently released study establishes resources based values for certain radiology services. The study by William C. Hsiao, Ph.D., et al., "A National Study of Resource-Based Relative Value Scales for Physician Services", *The New England Journal of Medicine*, 319 (1988), 835, was conducted by the Harvard School of Public Health and its subcontractor, the American Medical Association, and funded by HCFA. We intend to review that analysis or other available data that are brought to our attention and, if appropriate, may propose revisions to the radiology relative value scale. Such revisions may be made effective at times other than the three-year update intervals discussed below.

Currently, in some carrier areas, three aspects of radiology services have been or can be billed. The physician can bill for the "professional only" aspects of a service, such as reading an X-ray. This is a professional component billing. An entity can also bill for only the technical component of a radiology service, such as the taking of an X-ray. Finally, there can also be a bill for the complete or global service (that is, both the professional and the technical components). Therefore, a radiology service may technically be three services. Only a small amount of technical component billing is actually done under the reasonable charge methodology. Most radiology service billings are on a global or professional only basis.

The relative value scale in Appendix A has a global, professional, and technical component breakdown for each radiology service listed. The base procedure on that relative value scale is the professional component of code 71010, single view chest x-ray; that service has been given a value of one (1.00).

Some CPT-4 radiology codes have payment-related modifiers representing something other than global, professional, or technical services. For example, some may have a modifier of "22", which means that the procedure involved unusual circumstances. Others may have a modifier of "52", which means reduced services. In carrier areas where prevailing charge screens have not been established for claims with payment-related modifiers other than blank (global service), "26" (professional service), or "TC" (technical service) and those claims are instead paid on a case-by-case or individual consideration basis, this practice will be continued during 1989. If a carrier currently establishes screens for radiology codes with other than blank, "26" or "TC" modifiers, the carrier will establish a local relative value for the service, as modified. (See Appendix B.) Effective for services furnished on or after January 1, 1990, no payment-related unusual modifiers will be recognized for fee schedule payment purposes. We are recognizing them for one year to give carriers sufficient time to phase out their use. We do not believe that these modifiers should continue to be recognized since the values established in the fee schedule are intended to represent the correct value for the HCPCS identified code, regardless of whether or not unusual circumstances were associated with furnishing the services.

Also, in the relative value scales, values are established for only weekly management radiation therapy codes. No values are established for daily management. This is because, effective April 1, 1989, payment will be made on only a weekly management basis. Weekly management services will include most covered services furnished by radiation therapists or in conjunction with radiation therapy. Daily management services will no longer be recognized for a Medicare payment because of the difficulty of obtaining documentation showing that daily physician services were provided to a patient. Weekly management, on the other hand, can be payable even if a covered physician service is not furnished at the time of each individual treatment. By paying a "global" weekly treatment fee, fragmentation of services, which occurs with daily fees, will be reduced.

2. Development of Conversion Factors

As required by section 1834(b)(1)(B) of the Act, we must develop appropriate conversion factors to be used in determining the fee schedules for radiologist services. The conversion factor is the dollar value used as a multiplier with the service's relative value in order to determine the fee schedule amount for the radiology service.

The requirement under section 1834(b)(4) of the Act that the fee schedules developed for 1989 be budget

neutral was a significant consideration in our development of appropriate conversion factors. Budget neutral means that the application of the fee schedule is to result in outlays for radiologist services that are no greater nor any less than would have occurred in 1989 had the fee schedules not been implemented.

Another issue that we considered was the geographic basis for which conversion factors should be computed, that is, at the locality, the carrier area, or the national level. The computation of one conversion factor for the entire nation would have the effect of creating one fee schedule applicable nationwide. We decided against this approach in favor of locality conversion factors, because of the provision in section 1834(b)(3)(A) of the Act that we take geographic cost variations into consideration when developing the fee schedules.

Locality-specific conversion factors will result in each locality's keeping the same amount of aggregate payment for radiology services furnished by radiology providers as would have resulted if these services continued to be paid under the usual reasonable charge methodology. Therefore, to the extent that geographic variations in our Medicare allowed charges reflect geographic cost variations, those cost variations have been considered in the calculation of the conversion factor. The result will be a fee schedule for each locality in the carrier's service area.

We are planning, however, to have carriers compute a carrierwide conversion factor to be available for fee schedule pricing in localities where no current locality conversion factor can be computed. This could occur in localities where there are currently no portable x-ray suppliers or no radiologists. (See subsequent discussion regarding separate conversion factors for these two groups). A carrierwide factor would be available to be applied in such localities if a physician or supplier covered by the fee schedule were to move into the area.

The conversion factors (CF) will be computed by dividing the estimated total Medicare charges that would have been allowed in 1989 under the reasonable charge methodology for physicians and suppliers subject to the fee schedule by the sum of each radiology service's relative value (RV) times the frequency (Freq) that the service (Proc) was performed by the individuals in the year ending June 30, 1988. The estimated total Medicare charges are determined by multiplying the lowest of the 1989 reasonable charge screen (RCS) that would have gone into effect absent the fee schedule under the provisions of § 405.502 and § 405.555(c)(2) for each physician or supplier (MD), by the frequency (Freq) with which the service (Proc) was performed in the year ending June 30, 1988. The quotient is then multiplied by .97 to yield the three percent savings required by law.

Thus,

$$CF = 0.97\left[\frac{(\text{Freq MD}_1\text{Proc}_1)(\text{RCS})+\ldots+(\text{Freq MD}_1\text{Proc}_n)(\text{RCS})+(\text{Freq MD}_2\text{Proc}_1)(\text{RCS})+\ldots+(\text{Freq MD}_n\text{Proc}_n)(\text{RCS})}{(\text{Freq Proc}_1)(\text{RV Proc}_1)+(\text{Freq Proc}_2)(\text{RV Proc}_2)+\ldots+(\text{Freq Proc}_n)(\text{RV Proc}_n)}\right]$$

The conversion factors will be computed by each carrier and will be subject to HCFA regional office approval.

Thus, as required by the statute, we have set the fee schedule payment amounts at 97 percent of the amounts, in the aggregate, that would have been paid in the absence of the fee schedule. To the extent the implementation of the fee schedule results in behavioral changes in the provision of radiology services, the fee schedule may not result in a three percent reduction in aggregate Medicare payments. We intend to monitor the aggregate amounts being paid under the fee schedule to determine how closely they approximate 97 percent of the amounts that would have been payable on a reasonable charge basis.

One aspect that we will specifically evaluate will be the relationship of actual charges to the fee schedule amount, compared with the relationship of actual charges to the reasonable charge screens used prior to the fee schedule. Generally, under the reasonable charge system, Medicare payment is based on the lower of the actual charge or the applicable reasonable charge screen. In establishing the conversion factor, we used the applicable reasonable charge screen; however, we did not factor into the conversion factor computation the effect of actual charges lower than the reasonable charge screen. Our reasons for not doing this are that—

- Situations in which physicians charge less than the reasonable charge screen are relatively rare and insignificant when they do occur; and
- The degree to which radiologists occasionally charged less than the reasonable charge screen in the past will likely be the same under the fee schedule.

Thus, our assumption is that the resultant conversion factors under the fee schedule are budget neutral (minus three percent) compared to what would have been paid under the reasonable charge system. During 1989 we intend to closely review both our experience under the fee schedule and historic charging practices of radiologists, to evaluate the validity of our assumptions. If they prove to be incorrect, we will propose an appropriate downward adjustment in the conversion of factor at the time of a subsequent update.

Section 1834(b)(3)(B) provides that we may consider specialty differentials in developing the relative value scale and fee schedules. We have decided that carriers should establish conversion factors for portable x-ray suppliers separate from those applicable to all other entitles. Although portable x-ray suppliers are paid under the same codes as others, the technical component x-ray services that they furnish are generally different from the x-ray services furnished by others. Portable x-ray services tend to involve special equipment requiring extra time for assembling and dismantling. Also, the patients are often elderly nursing home or homebound patients requiring extra time and care for the set-up of the x-ray. Therefore, to the extent that the experience of nonportable x-ray suppliers has influenced the relative value amounts of the "common" codes, portable x-ray suppliers could be disadvantaged. A separate conversion factor accommodates for this and the ultimate payment outcome amounts to a separate relative value scale for portable x-ray suppliers. Other categories of radiology supplier, on the other hand, do not often share their high-volume codes with other types of suppliers. For example, radiation therapy codes are generally billed by only radiation oncologists. Therefore, generally, no other category of supplier has influenced the relative values established for these codes. As a consequence, no separate relative value scale or conversion factor is needed to limit the influence of one type of supplier on the most pertinent relative values of another.

3. Code Collapsing

There are over 700 codes that we are considering to represent radiology services. We receive very few bills for many of those codes. Although we are not deleting or revising any of the radiology codes as a part of this interim rule, we are soliciting suggestions for radiology code deletions or revisions. Any comments we receive concerning the revision or deletion of radiology codes will be considered as a part of any future changes HCFA may recommend as a part of the CPT–4 procedure code update process.

F. Method of Payment Under the Radiology Fee Schedules

As discussed above in section IV.A. of this preamble, section 1833(a)(1)(J) of the Act requires that Medicare's payment for radiologist services is 80 percent of the lesser of the actual charge or the radiology fee schedule amount. However, section 1834(b)(4)(D) of the Act requires that the same payment distinctions between participating and nonparticipating physicians that apply to prevailing charges as set forth in section 1842(b)(4)(A)(iv) of the Act also apply to radiology fee schedule payments. Section 4042(c) of Pub. L. 100–203, as amended by 411(f)(2) of Pub. L. 100–360, amended section 1842(b)(4)(A)(iv) of the Act to provide that the prevailing charge level for nonparticipating physicians is 95 percent of the level for participating physicians. Therefore, nonparticipating physicians' and suppliers' fee schedule amounts are equal to 95 percent of the fee schedule amount applicable to participating physicians and suppliers.

In addition, sections 1834(b)(5)(A) and (B) of the Act place a limit on the amount a nonparticipating physician or supplier can charge a Medicare beneficiary for a service for which payment is made under a radiology fee schedule. In 1989 (that is, April 1, 1989 through December 31, 1989), the nonparticipating physician or supplier can charge no more than 125 percent of the fee schedule amount applicable to the service. In 1990, the limit on charges is 120 percent of the fee schedule amount and after 1990, the limit on charges is 115 percent of the fee schedule amount. (Since a nonparticipating physician's or supplier's fee schedule amount is 95 percent of a participating physician's or supplier's fee schedule amount, the limit on the charge made to the beneficiary in 1989 on or after April 1, 1989, for example, is 125 percent of the 95 percent.) When the charge limit specified by section 1834(b)(5)(A) and (B) applies, the maximum allowable actual charges (MAACs), established under section 1842(j)(1)(B) of the Act, do not apply.

Under section 1834(b)(5)(C) of the Act, if a physician or supplier knowingly or willfully imposes a charge in violation of the limit on charges, the Secretary may apply sanctions against the physician or supplier (that is, excluding the physician or the supplier from the program or imposing civil money penalties, or both). These regulations do not include details regarding the sanctions process. Regulations now being developed by the Department's Office of Inspector General will include details on this provision.

G. Updating the Relative Value Scale and Conversion Factors

As required in section 1834(b)(4)(C) of the Act, fee schedule values will be updated annually by the percentage increase in the MEI.

We will also revise the radiology fee schedules at least every three years, primarily for the purpose of adding new services or new procedure codes. Until these revisions are made, carriers will pay for any new services or new codes under a local fee schedule (that is, on the basis of a local relative value scale and the locality's conversion factor). (See Appendix B.) New services will be added to the national relative value scale fee schedules after we have had the opportunity to consult with the American College of Radiology and other interested organizations regarding appropriate values for the new services.

At the time of the revisions, new national relative values and conversion factors will be established.

If, after a fee schedule is effective, there is deletion of a CPT–4 code with a cross-referral to a different current code, we will implement that change in the fee schedules when HCPCS changes in the reasonable charge system are being made. This will not involve the establishment of new fee schedule values.

When there is merely a deletion of a code from HCPCS and no cross-referral to another code, there is no need to develop a new fee schedule value. Implementation of the deletion will occur when HCPCS changes are made in the reasonable charge system.

If there is a fragmentation of a current code and the new codes are not components of the old (for example, procedure code X represents a procedure done on either the right or the left side and that code is fragmented into two—one for the procedure on the left side and the other for the procedure on the right side), each of the one or more new codes will receive the fee schedule value of the predecessor code. Again, there will be no new fee schedule values involved and we will implement the change when the HCPCS changes are made in the reasonable charge system. If the new codes were components of the old, the relative value of the old code will be divided evenly among the new codes unless we instruct otherwise.

If two or more "component" codes are collapsed, into a single new code, the fee schedule values for the resulting codes will be the sum of the values of the component services. The change will be implemented when HCPCS changes are made in reasonable charge.

When language revisions are made in the description of a given code, we will make any appropriate changes in the code's relative value at HCPCS conversion time.

H. Continuation of Reasonable Charge Screens

Since the radiology services furnished by physicians and suppliers who are not subject to the fee schedule continue to be paid under the general reasonable charge rules, we will continue to compute reasonable charge screens for radiology services.

Customary charges for radiology services will continue to be computed for all physicians and suppliers, including physicians and suppliers who are subject to the fee schedule. Physicians and suppliers not subject to the fee schedule must continue to have customary charges computed for them because they will continue to receive payment for radiology services on a reasonable charge basis. Fee schedule physicians and suppliers also must continue to have customary charges computed for their radiology services because, as is discussed below, those customary charges will be used to compute prevailing charges.

Carriers will have to continue to compute area prevailing charges for radiology services.

In carrier areas where radiologists' charges are merged with those of other physicians to compute prevailing charges (that is, where there is no unique radiology prevailing charge), prevailing charges must be computed—to be applicable to any physician not subject to the fee schedule—and those prevailing charges must be based on the customary charges of both physicians subject to the fee schedule and those who are not.

In computing prevailing charges for radiology services, we will include in the array the customary charges of

physicians and suppliers who are subject to the fee schedule. This is because the concept of a prevailing charge (that is, not the MEI-adjusted prevailing charge) is that it is a measure of how physicians in the area have been charging, not a measure of how they have been or will be paid. It is therefore irrelevant how Medicare pays physicians (on a reasonable charge or a fee schedule basis) when determining whether their charges, if available in our data system, should be used in computing customary and prevailing charges. All actual charges, regardless of our method of payment to the physicians, will be used. This is consistent with our regulations at § 405.504, which discuss how prevailing charges are to be determined. That section does not indicate that only customary charges of physicians under the reasonable charge system are to be used.

VI. Regulatory Impact Statement and Flexibility Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any interim rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

According to data from HCFA's BMAD system, allowed charges for radiology procedures performed by radiologists in calendar year 1986 were approximately $1.6 billion. Section 1834(b)(4) of the Act requires that the Secretary develop preliminary fee schedules for 1989 that are budget neutral. However, the fee schedules that are established for actual payment purposes for radiologist services furnished in 1989 must be 97 percent of the amounts established in the preliminary fee schedules.

We anticipate that this interim rule will result in the following savings:

TABLE I.—PROJECTED MEDICARE SAVINGS AS A RESULT OF FEE SCHEDULES FOR RADIOLOGIST SERVICES [1]

FY 1989	FY 1900	FY 1991	FY 1922	FY 1993	FY 1994
$15	$35	$40	$50	$55	$60

[1] Rounded to the nearest $5 million.

Although we have reduced the fee schedule amounts by three percent, our estimates do not reflect a three-percent savings. This is due to the effects of rounding to the nearest five million dollars, anticipated changes in the behavior patterns of physicians, savings not being realized in the year in which the service is furnished due to a time lag in billing, and the regulation's implementation date of April 1, 1989 (which means that only six months of savings are realized).

In addition, we anticipate that physicians, in response to this fee schedule, may change their behavioral patterns. These changes may include increased utilization or increased intensity of services, in order for them to maintain current levels of Medicare reimbursement.

This interim rule does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this interim rule is not a major rule under E.O. 12291, and an interim regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that an interim rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are treated as small entities.

This interim rule implements sections 1833(a)(1)(J) and 1834(b) of the Act as amended by section 4049 of Pub. L. 100-203 and section 411(f)(8) of Pub. L. 100-360. We are preparing a regulatory flexibility analysis for this interim rule because of the large number of physicians who will be affected and the significance and potential controversy of these provisions.

Section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if an interim rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural hospital impact statement since we have determined, and the Secretary certifies, that this interim rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

1. Impact on Physicians

It is clear that the fee schedule established by this regulation will affect a substantial number of physicians. These physicians can be divided into three categories. Those who are American Board of Radiology (ABR)-certified, ABR-eligible, or physicians for whom at least 50 percent of their total Medicare Part B charges are for radiology services. As of December 31, 1986, there were 8,345 radiologists practicing in the United States with 6,365 being certified by their corresponding board (Physician Characteristics and Distribution in the U.S., 1986. Department of Data Release Services, Division of Survey and Data Resources, American Medical Association, 1987). We expect that most of these physicians will be subject to the fee schedules.

In order for the fee schedule to apply to a radiology service, the service has to meet the following criteria: (1) The service must be a radiology service; and (2) the service must be performed by or under the supervision of an ABR-certified or ABR-eligible physician or by a physician with at least 50 percent radiology service charges. Radiologists as a group had a Medicare participation rate of 40 percent in 1987 and a Medicare assignment rate of 73 percent in 1986.

As added, section 1834(b)(4)(A) of the Act provides that the Secretary will develop preliminary fee schedules for 1989, that are designed to result in the same amount of aggregate payments (less any coinsurance and deductibles under sections 1833(a)(1)(J) and 1833(b) of the Act) for radiologist services furnished in 1989 as would have been made if this section had not been enacted. Section 1834(b)(4)(B) of the Act requires that the fee schedules established under this paragraph for radiologist services furnished in 1989 be 97 percent of the amounts permitted under the preliminary fee schedules developed under 1834(b)(4)(A) of the Act. Consequently, the overall impact of the fee schedules on the radiology industry as a whole in 1989 will be an average three-percent reduction in Medicare fee levels. For those years after 1989, fee schedule values will be

updated annually by the Medicare Economic Index. At least every three years, new services will be added as appropriate and the fee schedule system will be rebased using a new relative value scale and new conversion factors.

a. *Participating Physicians.* The three percent reduction in the fee schedule amounts will not necessarily result in a three percent reduction in Medicare payments to an individual physician. First, there may be redistributions involved in the shift from the reasonable charge payment methodology to the fee schedule. Payment for an individual service and for the particular mix of services furnished by a physician may be more or less than 97 percent of the amount the physician currently receives on a reasonable charge basis for the same services. Second, there may be behavioral changes, for example, changes in the volume or mix of services a physician provides, in response to the different amounts received under the fee schedule that would affect the total payments received from Medicare. Finally, payments for any nonradiologic services furnished by the physician are unaffected by the fee schedule.

b. *Nonparticipating Physicians.* Nonparticipating physicians will also be affected by this interim rule to the extent that their covered services will be subject to the fee schedule. Section 1834(b)(5)(B) of the Act places an upper limit on the amount that a nonparticipating physician or supplier can charge beneficiaries. In 1989, the first year of implementation, the maximum allowable actual charge will be 125 percent of the fee schedule amount. In the second year, it will be 120 percent of the fee schedule amount, and, in the third and subsequent years, it will be 115 percent of the fee schedule amount. A nonparticipating physician's fee schedule amount will be 95 percent of a participating physician's fee schedule amount. Therefore, in 1989, for example, the nonparticipating physician's upper charge limit will be 125 percent of 95 percent of the amount allowed for participating physicians.

2. Impact on Portable X-ray Suppliers

Portable X-ray suppliers bill using specialty code 63 under the HCFA BMAD system. As of April 1988, there were approximately 440 portable X-ray suppliers in the United States. These suppliers account for slightly less than two percent of all total allowed charges for radiology services.

We are using a separate conversion factor for portable X-ray suppliers because if we were to use a combined conversions factor (that is, one that includes both portable X-ray suppliers and physicians furnishing radiology services) payments would be redistributed between portable X-ray suppliers and other physicians furnishing radiology services.

We believe that the impact on these suppliers will be similar to the one experienced by physicians. Our rationale is the same as the one advanced above for participating physicians.

3. Impact on Beneficiaries

We believe that this interim rule will have a negligible effect upon beneficiaries out-of-pocket expenses. Our main concern is the effect on Medicare beneficiaries out-of-pocket expenes on nonassigned claims. Congress has addressed this concern by placing an upper limit on the amount which a nonparticipating physician could charge beneficiaries. In 1989, the upper limit will be 125 percent of the fee schedule, in 1990 it will be 120 percent of the fee schedule, and in 1991 and subsequent years it will be 115 percent of the fee schedule.

C. Alternatives Considered

Our consideration of alternatives is limited because of the provisions set forth in section 4049 of Pub. L. 100–203. However, within this overall constraint, we have latitude in establishing the relative value scale, and the conversion factors. In section V of this preamble, we discuss the methodologies that we considered for each of these policy issues and our rationale for choosing a particular methodology.

D. Concluson

Medicare payment for radiologist services will vary among individual participating and nonparticipating physicians to the extent that there are differences in the particular mix of covered radiology services they furnish to Medicare patients and in the amount physicians charge for covered services prior to the implementation of this fee schedule.

Similarly, Medicare payment for radiologist services provided by portable X-ray suppliers will vary among individual suppliers depending on how much of their business is Medicare derived, and the amounts they charge for their services.

VII. Other Required Information

A. Interim Rule With Comment Period

Section 4049(b)(2) of Pub. L.100–203 established January 1, 1989, as the effective date for the implementation of the radiology fee schedule. However, for the reasons discussed below, we have been unable to meet that deadline. In order to achieve the objectives of section 4049 within a timeframe as close as possible to the Congressionally-prescribed effective date, we have determined that it is necessary to publish this regulation as an interim rule pursuant to the authority granted in section 4039(g) of Pub. L. 100–203. This regulation will be implemented April 1, 1989.

The development of a new relative value scale and fee schedule for radiologist services that meets the standards prescribed by Congress has proved to be an exceedingly complex task. Congress directed that the fee schedule be based on a variety of factors respecting the manner in which physicians furnish radiology services and that the fee schedule be equitable and promote efficient and effective provision of those services. Congress also directed that, in developing the schedule, we consult closely with the Physician Payment Review commission, the American College of Radiology, and other affected organizations. We have acted as expeditiously as possible to gather data, to meet with affected parties, to solicit their input on the design of the relative value scale and to discuss with them the numerous options that have come under consideration. We have also sought to expedite the process through shortened timeframes. Despite these efforts, publication by the January 1, 1989 effective date has eluded us.

We had expected to publish an interim rule before January 1, 1989. However, shortly before publication, we discovered several methodological problems with the computation of the conversion factors necessary for translating the relative values of the relative value scale into the payment amounts found on the fee schedule. These methodological errors had the effect of lowering the payment for all services. After consulting with American College of Radiology and other interested groups we determined that it was necessary to delay implementation of the fees schedule until April 1, 1989 in order to correct those methodological errors.

Section 4039(g) of Pub. L. 100–203 provides that, if necessary, we may issue regulations to implement certain provisions of that law, including the radiology fee schedule and other Medicare reforms, on an interim basis. Congress, in Pub. L. 100–203, charged the agency with developing and implementing several significant and complex payment reforms. Congress recognized, however, that the agency may not be able to both develop the

regulations necessary to implement these reforms and engage in the time-consuming and resource-consuming process entailed by the notice and comment procedure before the effective dates which it prescribed. At the same time, Congress recognized that interested parties should be given an opportunity to comment on implementing regulations. Therefore, it authorized the Secretary to provide a comment period after implementation of the regulation and, in the case of the radiology fee schedule, specified that there be close consultation between the agency and affected groups. For reasons explained below, we believe that this procedure is a particularly appropriate means of accommodating the interests and needs of all parties—the agency, the affected groups, and the public at large—in this case.

Publication of an interim rule is necessary in order for us to realize the objectives that Congress intended the radiology fee schedule to achieve. Congress intended the radiology fee schedule to provide for an equitable method of radiology payment under which payment for those radiology procedures determined to be overvalued would be reduced and payment for hitherto undervalued procedures would be increased. The fee schedule was also intended to achieve a three percent budgetary savings. Congress, moreover, believed that the public interest would be served best if this new payment policy were put in place on January 1, 1989. The methodological errors in the conversion factors would have resulted in the underpayment of all procedures, thereby frustrating the goal of equitable payment among radiologists. Therefore, in order to achieve this goal, we felt it necessary to delay implementation of the fee schedule until the errors were corrected. Now that the errors have been corrected, however, we feel it necessary to proceed as promptly as possible.

Were we to go through the traditional notice and comment process, we would have to leave the current radiology payment policy in place for an extended period of time subsequent to the date Congress intended the new payment policy to go into effect. This would make realization of the three percent savings more difficult. It would also be contrary to Congress's admonition that we put the fee schedule in place by January 1, 1989. We believe that our delay to correct the erroneous methodology coupled with publication of this regulation in interim form is necessary to preserve the objectives of equitable payment, cost-savings, fee schedule integrity, and timely implementation to the maximum extent possible.

In addition, the process we have employed in the development of this rule and the process we will employ in the interim between publication of this interim rule and publication of a final rule are more than adequate to ensure that all interested parties have an opportunity to voice their ideas and concerns and have them considered by the agency. As already noted, we have consulted closely and extensively with the American College of Radiology and a variety of other groups through each step of the regulation-development process. Nevertheless, we are interested in comments and advice regarding changes that should be made to this interim rule. Therefore, we are providing a 60-day comment period for public comments.

Because of the large number of items of correspondence we normally receive concerning regulations, we cannot acknowledge or respond to the comments individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and we will respond to the comments in the preamble of that rule.

B. Paperwork Reduction Act

This interim rule does not impose information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

We are amending 42 CFR Part 405, Subpart E as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter B—Medicare Program

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for Part 405, Subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(b), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. The table of contents for Part 405 Subpart E is amended by revising the title of the subpart, adding the titles for new §§ 405.530 through 405.533, and revising the titles for §§ 405.551 and 405.555, to read as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Radiology Fee Schedules; and Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

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Secs.

405.530 Payment of radiologist services under a fee schedule.

405.531 Basic methodology for calculating radiology fee schedules for calendar year 1989.

405.532 Calculating radiology fee schedules for calendar years after 1989.

405.533 Special rules for nonparticipating physicians furnishing radiology services.

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405.551 Payment of charges for physician services in providers: General provisions.

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405.555 Payment of charges for radiology services.

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3. Section 405.501 is amended by revising paragraph (a), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 405.501 Determination of reasonable charges.

(a) Except as specified in paragraphs (b) and (c) of this section, Medicare pays no more for Part B medical and other health services than the "reasonable charge" for such service. The reasonable charge is determined by the carriers (subject to any deductible and co-insurance amounts as specified in §§ 410.152 and 410.160 of this chapter.)

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(c) For services furnished on or after April 1, 1989, payment under Medicare Part B for radiologist services is governed by radiology fee schedules that are determined in accordance with the provisions of §§ 405.530 through 405.533.

* * * * *

4. New §§ 405.530 through 405.533 are added to read as follows:

§ 405.530 Payment of radiologist services under a fee schedule.

(a) *Purpose.* This section and §§ 405.531 through 405.533 implement sections 1833(a)(1)(J) and 1834(b) of the Act by establishing fee schedules for radiologist services.

(b) *Method of payment.* For services furnished on or after April 1, 1989, the amount paid under Medicare Part B for radiologist services is 80 percent of the lesser of—

(1) The actual charge; or

(2) The amount provided under the radiology fee schedules.

(c) *Definitions.* For purposes of this subpart, the following definitions apply:

"Radiology services" means services represented by—

(1) Level I HCFA Common Procedure Coding System (HCPCS) radiology procedure codes (that is, all codes beginning with the number 7) from the Physicians' Current Procedural Terminology, Fourth Edition (commonly referred to as CPT–4);

(2) Level II HCPCS alpha-numeric "R" codes, including R0070—Transporting of portable x-ray equipment; and

(3) Level III (local assignment) HCPCS radiology codes.

"Radiologist services" means radiology services furnished by or under the direct supervision of a physician—

(1) Who is certified, or eligible to be certified, by the American Board of Radiology; or

(2) For whom radiology services account for at least 50 percent of the physician's total amount of charges made under Medicare Part B.

§ 405.531 Basic methodology for calculating radiology fee schedules for calendar year 1989.

(a) *General rule.* For services furnished on or after April 1, 1989 and before January 1, 1990, each carrier establishes a radiology fee schedule for each locality in its service area based on a national relative value scale and any appropriate local relative value scale multiplied by locality-specific conversion factors computed as described in paragraphs (b) through (d) of this section.

(b) *Relative value scales.*

(1) *National relative value scale.* HCFA establishes a national scale.

(2) *Local relative value scale.* Each carrier establishes a local scale (at the carrier service area level) for radiology services that are not included in the national scale and that are not reimbursed on an individual or case-by-case basis.

(c) *Conversion factors.* After separating the portable x-ray data from all other data, each carrier establishes two conversion factors for each locality (one for portable x-ray suppliers and another for all other radiology physicians and suppliers) by—

(1) Computing the locality's total Medicare reasonable charges that would have been recognized during 1989 under the reasonable charge methodology (see §§ 405.502 and 405.555(c)(2));

(2) Dividing that amount by the sum of each radiologist service's relative value, multiplied by the 1989 charge year (that is, July 1, 1987 through June 30, 1988) frequency in the locality; and

(3) Multiplying that amount by 97 percent.

§ 405.532 Calculating radiology fee schedules for calendar years after 1989.

(a) *Annual update.* Radiology fee scheduels for services furnished in a calendar year after 1989 are established by updating the previous calendar year's fee schedules by the percentage increase in the Medicare economic index as described in § 405.504(a)(3)(i).

(b) *Revisions.* Using the methodology set forth in § 405.531, at least every three years—

(1) HCFA establishes new relative values; and

(2) Carriers established new conversion factors.

(c) *New radiology services.* New radiology services are added to the national relative value scale at the time of a revision under the provisions of paragraph (b) of this section. Until they are included on the national relative value scale, these services are paid on the basis of local relative value scales, established by the carriers.

§ 405.533 Special rules for nonparticipating physicians furnishing radiology services.

(a) *Fee schedule amounts.* The payment amount recognized under the radiology fee schedules for a nonparticipating physician or a nonparticipating supplier is limited to the applicable percent (as set forth in section 1842(b)(4)(A)(iv) of the Act) of the fee schedule amount.

(b) *Limit on actual charge.* The charge made to a beneficiary by a nonparticipating physician or a nonparticipating supplier for a radiology service for which payment is made under a radiology fee schedule is limited as follows:

(1) In 1989, the charge may not exceed 125 percent of the fee schedule amount applicable to the service.

(2) In 1990, the charge may not exceed 120 percent of the fee schedule amount applicable to the service.

(3) For years after 1990, the charge may not exceed 115 percent of the fee schedule amount applicable to the service.

5. In § 405.550, the introductory text of paragraph (b) is revised, the introductory text of paragraph (e) is republished, and paragraph (e)(1) is revised to read as follows:

§ 405.550 Conditions for payment of charges for physician services to patients in providers: General provisions.

* * * * *

(b) *Conditions for payment for services of physicians to provider patients.* The carrier pays for services of physicians to patients of providers on a reasonable charge basis or, for radiologist services, under a fee schedule only if the following requirements are met:

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(e) *Effect of physician's assumption of operating costs.* If a physician or other entity enters into an agreement (such as a lease or concession) with a provider, under which the physician (or entity) assumes some or all of the operating costs of the provider department in which the physician furnishes physician services in the provider, the following rules apply:

(1) The carrier makes payment under a radiology fee schedule or on a reasonable charge basis only for a physician's services to an individual patient.

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6. Section 405.551 is amended by revising the heading and paragraphs (a) and (f) to read as follows:

§ 405.551 Payment of charges for physician services in providers: General provisions.

(a) *Scope.* The carrier determines payment of charges for physician services to patients in providers in accordance with the general rules governing reasonable charge payment in §§ 405.501 through 405.508, except as provided in paragraphs (b) through (f) of this section.

(f) *Rules for certain specialties.* In determining the amount of payment for anesthesiology or radiology services furnished by a physician to an individual patient, the carrier applies the rules in this section and in §§ 405.553 and 405.555 in addition to the general rules governing reasonable charges at §§ 405.501 through 405.508 and the rules concerning payment of radiologist services on a fee schedule basis at §§ 405.530 through 405.533.

7. Section 405.554 is revised to read as follows:

§ 405.554 Conditions for payment of charges: Radiology services.

(a) *Services to patients.* The carrier reimburses radiology services furnished by a physician to an individual patient on a radiology fee schedule or reasonable charge basis only if the services meet the conditions for reasonable charge payment in

§ 405.550(b) and are identifiable, direct, and discrete diagnostic or thereapeutic services to an individual patient, such as interpretation of X-ray plates, angiograms, myelograms, pyelograms, or ultrasound procedures.

(b) *Services to providers.* The carrier does not pay on a radiology fee schedule or reasonable charge basis for physician services to the provider (for example, administrative or supervisory services) or for provider services needed to produce the X-ray films or other items that are interpreted by the radiologist. However, allowable costs for such services will be paid to the provider by the intermediary. (See § 405.480 for provider costs, and § 405.550(e)(2) for costs borne by a physician, such as under a lease or concession agreement.)

8. In § 405.555, the heading and paragraph (b) are revised, the introductory test of paragraph (c) is republished, and paragraph (c)(1) is revised to read as follows:

§ 405.555 Payment of charges for radiology services.

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(b) *Services not furnished in providers.* If the services are furnished in a radiologist's office, a freestanding radiology clinic, or any other setting that is not part of a provider, the carrier determines the amount of payment for the services under the general reasonable charge rules in §§ 405.501 through 405.508 or the rules governing payment under a radiology fee schedule in §§ 405.530 through 405.533.

(c) *Services furnished in providers.* If the services are furnished in a hospital radiology department or any other setting that is part of a provider, the following rules apply:

(1) The carrier determines the amount of payment under the payment of charges rules for physician services in providers in § 405.551 and the general reasonable charge rules in §§ 405.501 through 405.508 or the radiology fee schedule rules in §§ 405.30 through 405.533.

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(Catalogue for Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: February 16, 1989.

Terry Coleman,

Acting Administrator, Health Care Financing Administration.

Approved: February 24, 1989.

Don M. Newman,

Acting Secretary.

Note: Appendices A, B, and C will not appear in the Code of Federal Regulations.

BILLING CODE 4120-01-M

APPENDIX A

RADIOLOGY NATIONAL RELATIVE VALUE SCALE

Proc Code	Description	GLOBAL RVS	PROFESSIONAL RVS	TECHNICAL RVS
70030	eye for f.b. detect	2.18	0.97	1.21
70100	mandible,partial,<4 views	2.54	1.02	1.52
70110	mandible,compl,min 4 views	3.20	1.38	1.82
70120	mastoids,<3 views per side	2.84	1.02	1.82
70130	mastoids,compl,>2 views per side	4.13	1.85	2.28
70134	internal aud meati, compl	3.98	1.85	2.12
70140	facial bones,<3 views	2.87	1.05	1.82
70150	facial bones,compl,>2 views	3.73	1.45	2.28
70160	nasal bones,compl,>2 views	2.47	0.95	1.52
70170	dacryocystography,naso-lac duct,s&i	4.36	1.63	2.73
70171	dacryocystography,naso-lac dt,compl	7.79	5.06	2.73
70190	optic foramina	3.01	1.19	1.82
70200	orbits,compl,>3 views	3.82	1.55	2.28
70210	sinuses, paranasal,up to 2 vws	2.77	0.95	1.82
70220	sinuses, paranas,cmpl,3 or more views	3.66	1.38	2.28
70240	sella turcica	2.29	1.08	1.21
70250	skull,<4 views, w/wo stereo	3.18	1.35	1.82
70260	skull,compl,>3 views,w/wo stereo	4.43	1.85	2.58
70300	teeth,single view	1.31	0.55	0.76
70310	teeth,part,less than full mouth	2.07	0.86	1.21
70320	teeth,compl,full mouth	3.52	1.24	2.28
70328	tmj,open&closed mouth,unilat	2.46	1.02	1.44
70330	tmj,open&closed mouth,bil	3.78	1.35	2.43
70332	tmj arthrography,s&i	9.17	3.10	6.07
70333	tmj arthrography,compl	14.48	8.40	6.07
70350	cephalogram,orthodontic	1.97	0.91	1.06
70355	orthopantogram	2.78	1.11	1.67
70360	neck,soft tissue	2.15	0.94	1.21
70370	pharynx/larynx,w/fluoro and magnif	5.56	1.77	3.79
70371	pharynx,/speech eval,cine/video	10.77	4.70	6.07
70373	laryngography,contrast,s&i	7.62	2.46	5.16
70374	laryngography,contrast,compl	11.44	6.28	5.16
70380	salivary gland for calculus	2.93	0.95	1.97
70390	sialography,s&i	7.23	2.07	5.16
70391	sialography,compl	10.66	5.50	5.16
70450	CT,head/brain;w/o contrast material	19.96	4.78	15.18
70460	CT,head/brain;w/contrast materials	24.52	6.30	18.21
70470	CT,head/brain;wo/contr,then contr	29.90	7.13	22.76
70480	CT,orbit,sella,pos fossa/ear;wo/con	22.36	7.19	15.18
70481	CT,orbit,sella,pos fossa/ear;w/con	25.95	7.74	18.21
70482	CT,orb,sella,p.fossa/ear;wo/thenw/c	30.89	8.13	22.76
70486	CT maxillofacial,wo/contrast	21.54	6.36	15.18
70487	CT maxillofacial,w/contrast	25.48	7.27	18.21
70488	CT face;wo/,then w/contr&other sects	30.75	7.99	22.76
70490	CT neck;wo/contrast	22.36	7.19	15.18

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RADIOLOGY NATIONAL RELATIVE VALUE SCALE

Proc Code	Description	GLOBAL RVS	PROFESSIONAL RVS	TECHNICAL RVS
70491	CT neck;w/contrast	25.95	7.74	18.21
70492	CT neck;wo/,then w/contr&furth sec	30.89	8.13	22.76
70540	MR;orbit,face and neck	44.34	8.29	36.04
70551	MR;brain (including brain stem)	44.34	8.29	36.04
71010	chest,single view, frontal	2.36	1.00	1.37
71015	chest,stereo,frontal	2.68	1.16	1.52
71020	chest,2 views,frontal and lat	3.04	1.22	1.82
71021	chest,2 vws,fr&lat,w/ap lord proc	3.59	1.47	2.12
71022	chest,2 vws,fr&lat,w/obl proj	3.84	1.71	2.12
71023	chest,2 vws,fr&lat,w/fluor	4.38	2.10	2.28
71030	chest,compl,min 4 views	3.99	1.71	2.28
71034	chest,compl,min 4 views, w/fluor	6.77	2.60	4.17
71035	chest,spec vws,(eg lat decub,Bucky)	2.51	1.00	1.52
71036	n-bx intrath les w/fu;fl loc only	7.65	3.10	4.55
71037	n-bx intrath les w/fu film;compl	19.54	14.98	4.55
71038	fluoro loc transbronch bx/brush	7.95	3.10	4.86
71040	bronchography,unilat,s&i	7.54	3.29	4.25
71041	bronchography,unilat,compl	13.12	8.87	4.25
71060	bronchography,bil,s&i	10.52	4.15	6.37
71061	bronchography,bil,compl	16.11	9.73	6.37
71090	insert pacemaker,fluor&rad,s&i	7.95	3.10	4.86
71100	ribs,unilat,2 views	2.91	1.24	1.67
71101	ribs,unilat,w/post/ant chest,>2 vws	3.47	1.49	1.97
71110	ribs,bil,3 views	3.77	1.49	2.28
71111	ribs,bil;w/p/a chest,min 4 views	4.32	1.74	2.58
71120	sternum,min 2 views	3.00	1.11	1.90
71130	sternoclav jt/s,min 3 vws	3.27	1.22	2.05
71250	CT,thorax;wo/contrast	25.47	6.50	18.97
71260	CT,thorax;w/contrast	29.73	6.97	22.76
71270	CT,thorax;wo/,then w/contr&sections	36.20	7.74	28.46
71550	MR;chest	45.03	8.99	36.04
72010	spine,entire,survey,a/p and lat	5.44	2.48	2.96
72020	spine,single vw, specify level	2.03	0.82	1.21
72040	spine,cx, a/p and lat	2.96	1.22	1.75
72050	spine,cx; min 4 vws	4.29	1.71	2.58
72052	spine,cx,compl,w/obl&flex,&/ext st	5.23	1.96	3.26
72070	spine,thor,a/p and lat	3.11	1.22	1.90
72072	spine,thor,a/p &lat,w/swim cx/th jx	3.34	1.22	2.12
72074	spine,thor,compl,w/obl,min 4 vws	3.87	1.22	2.66
72080	spine,thor-lumb,a/p and lat	3.19	1.22	1.97
72090	spine,scoliosis st/ w/sup & erect	3.49	1.52	1.97
72100	spine,ls,a/p and lat	3.19	1.22	1.97
72110	spine, ls,compl w/obl vws	4.37	1.71	2.66
72114	spine,ls,compl w/ bending vws	5.38	1.96	3.41
72120	spine,ls,bending vws only,min 4	3.80	1.22	2.58

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Proc Code	Description	GLOBAL RVS	PROFESSIONAL RVS	TECHNICAL RVS
72125	CT,cervical spine;wo/contrast	25.47	6.50	18.97
72126	CT,cervical spine;w/contrast	29.59	6.83	22.76
72127	CT,cerv.spine;wo/,then w/contr&sections	35.59	7.13	28.46
72128	CT,thoracic spine;wo/contrast	25.47	6.50	18.97
72129	CT,thoracic spine;w/contrast	29.59	6.83	22.76
72130	CT,thor.spine;wo/ then w/contr&sections	35.59	7.13	28.46
72131	CT,lumbar spine; wo/contrast	25.47	6.50	18.97
72132	CT,lumbar spine;w/contrast	29.59	6.83	22.76
72133	CT.lum.spine;wo/ then w/contr&sect	35.59	7.13	28.46
72141	MR,spinal canal and contents;cerv.	45.03	8.99	36.04
72143	MR,spinal canal and contents;thor.	45.03	8.99	36.04
72144	MR;spinal canal and contents;lum.	44.34	8.29	36.04
72170	pelvis, a/p only	2.41	0.89	1.52
72180	pelvis,stereo	2.55	1.03	1.52
72190	pelvis,compl,min 3 vws	3.14	1.17	1.97
72192	CT,pelvis;wo/contrast	25.03	6.05	18.97
72193	CT,pelvis;w/contrast	28.50	6.50	22.01
72194	CT,pelvis;wo/ then w/contr&sections	34.15	6.83	27.32
72196	MR;pelvis	45.03	8.99	36.04
72200	sacroiliac jts, <3 views	2.50	0.98	1.52
72202	sacroiliac jts,3 or more vws	2.90	1.08	1.82
72220	sacrum&coccyx,min 2 views	2.64	0.97	1.67
72285	diskography,cx,s&i	28.90	4.62	24.28
72286	diskography,cx,compl	39.65	15.37	24.28
72295	diskography,lumbar,s&i	27.38	4.62	22.76
72296	diskography,lumbar,compl	38.14	15.37	22.76
73000	clavicle,compl	2.36	0.85	1.52
73010	scapula,compl	2.46	0.94	1.52
73020	shoulder, 1 view	2.16	0.80	1.37
73030	shoulder,compl, min 2 views	2.66	0.99	1.67
73040	shoulder,arthrography,s&i	9.17	3.10	6.07
73041	shoulder,arthrography,compl	13.07	6.99	6.07
73050	acromioclav jt,bil,w/wo wgted distr	3.06	1.09	1.97
73060	humerus,min 2 views	2.56	0.90	1.67
73070	elbow, a/p and lat	2.34	0.82	1.52
73080	elbow,compl, min 3 views	2.64	0.97	1.67
73085	elbow,arthrography,s&i	9.17	3.10	6.07
73086	elbow,arthrography,compl	13.07	6.99	6.07
73090	forearm, a/p and lat	2.39	0.87	1.52
73092	upper ext, infant, min 2 views	2.27	0.83	1.44
73100	wrist, a/p and lat	2.27	0.83	1.44
73110	wrist, compl, min 3 views	2.56	0.97	1.59
73115	wrist,arthrography,s&i	7.65	3.10	4.55
73116	wrist,arthrography,compl	11.55	6.99	4.55
73120	hand, 2 views	2.27	0.83	1.44

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Proc Code	Description	GLOBAL RVS	PROFESSIONAL RVS	TECHNICAL RVS
73130	hand, min 3 views	2.56	0.97	1.59
73140	finger or fingers, min 2 views	1.91	0.69	1.21
73200	CT,upper extremity;wo/contrast	21.99	6.05	15.94
73201	CT,upper extremity;w/contrast	25.47	6.50	18.97
73202	CT,upp ext;wo/ then w/contr&sections	30.73	6.83	23.90
73220	MR,upper extremity	44.34	8.29	36.04
73500	hip, unilat, one view	2.28	0.91	1.37
73510	hip,compl,min 2 views	2.83	1.16	1.67
73520	hips,bil,min 2vws each hip,w/ap pelv	3.41	1.44	1.97
73525	hip,arthrography,s&i	9.17	3.10	6.07
73526	hip,arthrography,compl	13.07	6.99	6.07
73530	hip, during OR proc	3.12	1.60	1.52
73540	pelvis &hips,infant/child,min 2 vws	2.80	1.13	1.67
73550	femur,a/p and lat	2.62	0.95	1.67
73560	knee,a/p and lat	2.40	0.88	1.52
73562	knee,a/p and lat, w/obl(s),min 3vws	2.69	1.02	1.67
73564	knee,compl,w/obl(s),&/tun,pat,stndg	3.07	1.24	1.82
73580	knee,arthrography,s&i	10.68	3.10	7.59
73581	knee,arthrography,compl	15.33	7.74	7.59
73590	tibia and fibula, a/p and lat	2.40	0.88	1.52
73592	lower ext,infant, min 2 views	2.27	0.83	1.44
73600	ankle, a/p and lat	2.27	0.83	1.44
73610	ankle, compl, min 3 views	2.56	0.97	1.59
73615	ankle,arthrography,s&i	9.17	3.10	6.07
73616	ankle,arthrography,compl	13.07	6.99	6.07
73620	foot, a/p and lat	2.27	0.83	1.44
73630	foot, compl, min 3 views	2.56	0.97	1.59
73650	calcaneus, min 2 views	2.20	0.83	1.37
73660	toe/toes, min 2 views	1.91	0.69	1.21
73700	CT,lower extremity;wo/contrast	21.99	6.05	15.94
73701	CT, lower extremity, w/contrast	25.47	6.50	18.97
73702	CT,low ext;wo/ then w/contr&sections	30.73	6.83	23.90
73720	MR,lower extremity	44.34	8.29	36.04
74000	abdomen, single a/p	2.51	1.00	1.52
74010	abdomen, a/p and add obl & cone vws	2.93	1.26	1.67
74020	abdomen,compl,w/decub &/ erect	3.31	1.49	1.82
74022	abd;compl ac abd w/sup,erct,&/dec	3.87	1.74	2.12
74150	CT,abdomen;wo/ contrast	24.85	6.64	18.21
74160	CT,abdomen;w/ contrast	29.14	7.13	22.01
74170	CT,abdomen;wo/ then w/contr&sections	35.17	7.85	27.32
74181	MR,abdomen	45.03	8.99	36.04
74210	pharynx &/cx esoph	5.35	1.94	3.41
74220	esophagus	6.04	2.63	3.41
74230	swallow fxn,phar&/esop,w/cine&/vid	6.84	3.04	3.79
74235	rem fb esoph w/ball cath w/fluoro	14.22	6.64	7.59

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RADIOLOGY NATIONAL RELATIVE VALUE SCALE

Proc Code	Description	GLOBAL RVS	PROFESSIONAL RVS	TECHNICAL RVS
74240	UGI;w/wo delay film,wo/KUB	8.12	3.87	4.25
74241	UGI;w/wo delay film,w/KUB	8.20	3.87	4.33
74245	UGI;w/sm bowel,w/mult series	12.02	5.11	6.91
74246	UGI,aircont w/wo gluc/delay,wo/KUB	8.65	3.87	4.78
74247	UGI,aircont w/wo gluc/delay,w/KUB	8.73	3.87	4.86
74249	ugi,aircon,w/wo gluc;w/sm b follow	12.55	5.11	7.44
74250	small bowel,w/mult serial vws	6.44	2.64	3.79
74260	duodenography, hypotonic	7.17	2.85	4.33
74270	colon, barium enema	8.80	3.87	4.93
74280	colon;air contr w/hi dens,w/wo glu	11.98	5.53	6.45
74290	cholecystography,oral contrast	3.87	1.74	2.12
74291	cholcystog,or con;add/rpt/mult day	2.32	1.11	1.21
74305	cholangiogr&/pancreatog,post-op	4.63	2.35	2.28
74310	cholangiogr&/pancreatog,iv	6.72	2.93	3.79
74315	cholangiogr&/pancreatog,oral contr	5.76	1.96	3.79
74320	cholangiogram, percu, transhep, s&i	12.20	3.10	9.11
74321	cholangiogram,percu,transhep,compl	24.09	14.98	9.11
74328	endocath bil ductal sys,fl mon&rad	13.03	3.93	9.11
74329	endocath pancr duct sys,fl mon&rad	13.03	3.93	9.11
74330	endocath bil/pancr duct ,fl mon&rad	13.03	3.93	9.11
74340	intro long gi tube, rad guide only	10.68	3.10	7.59
74350	percu place g-tube,rad guide only	13.36	4.26	9.11
74351	percu place g-tube,complete	30.65	23.06	7.59
74355	percu pl enterocly-tube,rad guid only	11.85	4.26	7.59
74356	percu pl enterocly tube;compl	30.65	23.06	7.59
74360	intralum dil strct&/obs;radguid only	12.20	3.10	9.11
74361	intralum dil strct&/obs;compl	31.91	22.81	9.11
74400	IVP w/wo KUB	7.62	2.76	4.86
74405	IVP, w/wo KUB,w/htn contr&/clear st	8.53	2.76	5.77
74410	urography,infusion, drip &/bolus	8.38	2.76	5.62
74415	urography,infus,drip&/bol,w/nephrot	8.91	2.76	6.15
74420	urography,retro,w/wo kub	9.52	1.94	7.59
74425	urography, antegr, s&i	5.73	1.94	3.79
74426	urography,antegr,compl	7.80	4.01	3.79
74430	cystography, min 3 views, s&i	4.78	1.74	3.04
74431	cystography,min 3 views, compl	6.30	3.26	3.04
74440	vaso,vesiculo,/epididymography,s&i	5.34	2.07	3.26
74441	vaso,vesiculo,/epididymography,compl	7.41	4.15	3.26
74445	corpora cavernosography,s&i	9.65	6.39	3.26
74446	corpora cavernosography,compl	25.82	22.56	3.26
74450	urethrocystography, retro, s&i only	6.05	1.80	4.25
74451	urethrocystography,retro, compl	7.71	3.46	4.25
74455	urethrocystography, voiding, s&i only	6.35	1.80	4.55
74456	urethrocystography,voiding, compl	8.42	3.87	4.55
74470	renal cyst st, translum,cont vis, s&i	6.74	3.10	3.64

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Proc Code	Description	GLOBAL RVS	PROFESSIONAL RVS	TECHNICAL RVS
74471	renalcyst st,translum,cont vis,compl	18.60	14.96	3.64
74485	dil nephrostomy/uret w/mon&rad,s&i	12.20	3.10	9.11
74486	dil nephrostomy,uret w/mon&rad,compl	38.11	29.00	9.11
74710	pelvimetry,w/wo placental local	4.92	1.88	3.04
74720	abd,fet age,pos&/plac loc;single vw	2.59	1.07	1.52
74725	abd,fetal age,pos&/plac loc,mult	3.33	1.36	1.97
74740	hysterosalpingography;s&i	5.87	2.07	3.79
74741	hysterosalpingography;compl	9.63	5.83	3.79
74775	perineogram(eg vaginogram for anom)	7.76	3.51	4.25
75552	MR,myocardium	45.03	8.99	36.04
75898	angio thr exist cth,f/u tx/emb/inf	12.30	9.26	3.04
75984	change percu cath w/contr mon,s&i	9.68	4.06	5.62
75985	change percu cath w/contr mon;compl	16.43	10.81	5.62
75990	drain abscess,percu,w/rad,w/wo cath	38.25	29.14	9.11
76000	fluoro,to 1hr md time(not chest)	4.68	0.88	3.79
76001	fluoro,md time >1 hr,asst nonrad md	11.38	3.79	7.59
76003	fluoro loc needle bx/nab	6.89	3.10	3.79
76010	nose to rectum,fb, 1 film,chld	2.51	1.00	1.52
76020	bone age studies	2.60	1.08	1.52
76040	bone length studies	3.77	1.49	2.28
76061	osseous survey,limited	5.40	2.52	2.88
76062	osseous survey,complete minimum 5 vw.	7.27	3.10	4.17
76065	osseous survey,infant	3.65	1.52	2.12
76066	joint sur,1 vw,1/more jt,(specify)	4.90	1.71	3.19
76070	CT,bone dens.	10.87	1.38	9.49
76080	fistula/sinus tract;s&i	6.13	3.10	3.04
76081	fistula/sinus tract;compl	8.21	5.17	3.04
76086	mammary duct/galactogram,single,s&i	9.58	1.99	7.59
76087	mammary duct/galactogram,single,comp	12.56	4.98	7.59
76088	mammary duct/galactogr,mult duc,s&i	13.14	2.52	10.62
76089	mammary duct/galactogr,mult,compl	16.93	6.30	10.62
76090	mammography,unilateral	4.42	1.38	3.04
76091	mammography,bilateral	6.06	2.27	3.79
76096	loc breast mass,pre-op,w/rad/US	13.09	5.50	7.59
76097	loc breast mass,pre-op,each add loc	6.16	3.12	3.04
76098	breast, surgical specimen	2.04	0.83	1.21
76100	single plane body sect exc kidney	6.96	3.32	3.64
76101	complex motion body exc kidney; unil	7.42	3.32	4.10
76102	complx motion body exc kidney;bil	8.33	3.32	5.01
76120	cinerad,except where spec included	5.14	2.10	3.04
76125	cinerad to complem routine exam	3.74	1.47	2.28
76150	xeroradiography	1.21	NO PC	1.21
76355	ct guide stereotactic loc	33.36	6.80	26.56
76360	ct guide needle bx,s&i	33.03	6.47	26.56
76361	ct guide needle bx,compl	44.92	18.36	26.56

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76365	ct guide cyst aspir, s&i	33.03	6.47	26.56
76366	ct guide cyst aspir, compl	44.92	18.36	26.56
76370	ct guide place of rad tx flds	14.27	4.78	9.49
76375	CT coron,sagit,mltpl,obl&/3d recon	12.21	0.83	11.38
76400	MR,bone marrow blood supply	45.03	8.99	36.04
76506	echoencephalogr,Bscan&/rl t,w/imdoc	7.66	3.57	4.10
76511	ophthal US,echo;Amode,sp an w/amp q	6.74	3.10	3.64
76512	ophthal US,echo;Bscan	8.13	3.73	4.40
76513	opthal US;immersion Bscan	8.13	3.73	4.40
76516	ophthal. biometry by U/S echo,Amode	6.71	3.07	3.64
76519	ophthal.bio.w/intraoc lens pwr calc	6.71	3.07	3.64
76529	ophthal.U/S foreign body local	7.21	3.26	3.95
76536	echo,head&neck,Bscan&/rl t,w/im doc	7.28	3.18	4.10
76604	echo,chest,Bscan w/med&/rl t w/im doc	6.95	3.15	3.79
76620	echocardiography,Mmode,complete	6.71	2.76	3.95
76625	echocardiography,limited	4.40	1.52	2.88
76627	echocardiogr,rl t w/im doc(2D);comp	9.76	4.45	5.31
76628	echocardiogr,rl t w/im doc(2D);ltd	7.21	3.26	3.95
76629	echocardiogr,Mmode&rl t w/im doc(2D)	11.10	5.34	5.77
76632	echocardiography,doppler	7.21	3.26	3.95
76645	echo,breast(s),Bscan&/rl t w/im doc	6.10	3.07	3.04
76700	echo abd,Bscan&/rl t w/im doc;compl	10.20	4.51	5.69
76705	echo,abd,Bscan&/rl t w/im doc;ltd	7.44	3.35	4.10
76770	echo,retroper,Bscn&/rl t w/im d;comp	9.84	4.15	5.69
76775	echo,retroper,Bscn&/rl t w/im d;ltd	7.42	3.32	4.10
76805	echo,preg ut,Bscn&/rl t w/im d;compl	11.60	5.53	6.07
76815	echo,preg ut,Bscn&/rl t w/im d;ltd	7.75	3.65	4.10
76816	echo,preg ut,Bscn&/rl w/im;F/U /rpt	6.45	3.26	3.19
76818	fetal biophysical profile	8.99	4.29	4.70
76825	echocardiog,fetal heart in utero	9.95	4.26	5.69
76855	echography,pelvic area(Doppler)	7.53	3.43	4.10
76856	echo,pelv(non-OB),Bscn&/rl t;compl	8.30	3.90	4.40
76857	echo,pelv(n-OB),Bscn&/rl t;ltd/F/U	5.11	2.07	3.04
76870	echography,scrotum and contents	8.00	3.59	4.40
76880	echography,extrem,Bscn&/rl t w/im doc	7.44	3.35	4.10
76925	imaging,periph.(Bscan/Dop/rl t scan)	8.88	4.17	4.70
76926	imaging,head&trunk(eg dupl Doppler)	8.88	4.17	4.70
76930	U/S guide pericardiocentesis;s&i	8.16	3.76	4.40
76931	U/S guide pericardiocentesis;compl	16.46	12.05	4.40
76934	U/S guide thoracentesis;s&i	8.16	3.76	4.40
76935	U/S guide thoracentesis;compl	13.41	9.01	4.40
76938	U/S guide cyst(any)/renpel asp;s&i	8.16	3.76	4.40
76939	U/S guide cyst(any)/renpl asp;compl	20.05	15.65	4.40
76942	U/S guide needle bx;s&i	8.16	3.76	4.40
76943	U/S guide needle bx;compl	20.05	15.65	4.40

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76944	U/S guide abscess/collect dr;s&i	8.16	3.76	4.40
76945	U/S guide abscess/collect dr;compl	29.73	25.32	4.40
76946	U/S guide amniocentesis;s&i	6.47	2.07	4.40
76947	U/S guide amniocentesis;compl	14.58	10.17	4.40
76948	U/S guide aspirate ova;s&i	6.47	2.07	4.40
76949	U/S guide aspirate ova;compl	14.58	10.17	4.40
76950	echo,place rad tx flds,Bscan	7.11	3.32	3.79
76960	U/S guid pl radtx fld(exc Bscn echo)	7.11	3.32	3.79
76970	U/S study follow-up(specify)	5.25	2.21	3.04
76986	echo, intraoperative	14.36	6.77	7.59
76991	U/S,intraluminal,(eg transrect/vag)	8.30	3.90	4.40
77261	th rad tx planning;simple	7.82	7.82	0.00
77262	th rad tx planning;intermed	11.78	11.78	0.00
77263	th rad tx planning;complex	17.56	17.56	0.00
77280	th rad simul-aid fld setting;simple	12.73	3.91	8.82
77285	th rad simul-aid fld setting;interm	19.96	5.83	14.13
77290	th rad simul-aid fld setting;cmplx	25.23	8.75	16.48
77300	rad dosim calcul,as req during tx	6.90	3.50	3.40
77305	teletx,isodose plan;simple(1-2 prt)	8.61	3.91	4.70
77310	teletx,isodose plan;interm(>2prts)	11.72	5.83	5.89
77315	teletx,isod pl;cmplx(mant,tang/etc)	15.47	8.75	6.72
77321	spec teletx port pl,partic/hemi/tot	15.54	5.31	10.23
77326	brachyth isodose calcul,simple	11.19	5.19	6.00
77327	brachyth isodose calcul,intermed	16.64	7.82	8.82
77328	brachyth isodose calcul,complex	24.25	11.67	12.58
77331	spec dosimetry(Specify)(TLD,micro)	6.20	4.90	1.30
77332	tx devices,design&constr,simple	6.49	3.09	3.40
77333	tx devices,design&constr,intermed	9.48	4.67	4.81
77334	tx devices,design&constr,complex	15.18	6.94	8.24
77336	cont rad phys cons sup th rad w/QA	7.56	4.96	2.60
77370	special med rad physics consult	8.87	6.88	1.99
77420	weekly megavolt tx manage,simple	31.42	9.01	22.41
77425	weekly megavolt tx manage,intermed	40.21	13.66	26.55
77430	weekly megavolt tx manage,complex	49.62	20.18	29.44
77465	daily k-volt tx mgmt	6.36	1.88	4.48
77470	spec tx proc(tot/hemibod/p-os/vag)	39.92	11.67	28.25
77600	hyperthermia,ext gen,superf(4/less)	17.57	8.75	8.82
77605	hyperthermia,ext gen, deep(>4cm)	23.42	11.67	11.75
77610	hyperthermia interstit probe;5/less	17.57	8.75	8.82
77615	hyperthermia interstit probe;>5appl	23.42	11.67	11.75
77620	hypertherm gen by intracav probe(s)	17.57	8.75	8.82
77750	infusion/instill radioelem sol	29.54	25.67	3.87
77761	intracav radioelem applic;simple	26.31	19.95	6.36
77762	intracav radioelem applic;interm	39.16	29.98	9.18
77763	intracav radioelem applic;complex	56.28	44.86	11.42

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Proc Code	Description	GLOBAL RVS	PROFESSIONAL RVS	TECHNICAL RVS
77776	interstit radioelem appl;simple	32.38	26.08	6.30
77777	interstit radioelem appl;interm	51.39	39.14	12.25
77778	interstit radioelem appl;complex	73.45	58.63	14.82
77789	surface application radioelement	7.13	5.83	1.30
77790	supervision,handling load radioelem	7.13	5.83	1.30
78000	thyroid uptake;single determination	3.86	1.05	2.81
78001	thyroid uptake;mult. determination	5.23	1.44	3.79
78003	thyr uptake;stim/supp/disc(wo/init)	4.63	1.82	2.81
78006	thyroid imag w/uptake,single deter.	9.67	2.76	6.91
78007	thyroid imag w/uptake,mult.deters	10.31	2.88	7.44
78010	thyroid imaging;only	7.42	2.18	5.24
78011	thyroid imaging w/vascular flow	9.55	2.57	6.98
78015	thyr ca met imaging;ltd(eg nk&chst)	11.22	3.79	7.44
78016	thyr ca met imag;w/add st(eg ur rec)	14.68	4.59	10.09
78017	thyr ca met imaging;mult areas	15.64	4.87	10.78
78018	thyr ca met imaging;whole body	21.02	5.31	15.71
78075	adrenal imaging;cortical	19.88	4.17	15.71
78102	bone marrow imag.;ltd area	9.04	3.12	5.92
78103	bone marrow imag.;mult. areas	13.38	4.20	9.18
78104	bone marrow imag.;whole body	16.24	4.48	11.76
78110	plasma vol,RN vol dil tech(sep);1 sam	3.78	1.05	2.73
78111	plasma vol,RN vol dil tech;mult sam	8.68	1.24	7.44
78120	red cell vl determ.(sep proc);1 sam	6.28	1.27	5.01
78121	red cell vl deter.;mult. sampl	10.19	1.77	8.42
78122	wh bld vol dtm,w/sep plasma&RBC vol	15.84	2.49	13.36
78130	red cell survival study	11.73	3.46	8.27
78135	red cell surv;w/spleen&/hep seques	17.71	3.59	14.11
78140	red cell spleen&/hepatic sequestration	14.84	3.46	11.38
78160	plasma iron disapp.	12.42	1.80	10.62
78162	iron oral absorp	11.75	2.49	9.26
78170	iron red cell util.	17.70	2.29	15.40
78185	spleen imaging only	9.04	2.21	6.83
78186	spleen imag. only w/vascular flow	10.97	2.63	8.35
78191	platelet survival	24.70	3.46	21.25
78192	WBC localization,lim area	14.32	4.45	9.86
78193	WBC localization;whole body	33.15	4.92	28.23
78195	lymphatics & lymph glands imaging	15.72	3.95	11.76
78201	liver imaging;static only	9.26	2.43	6.83
78202	liver imaging w/ vascular flow	11.25	2.90	8.35
78205	liver imaging SPECT	21.08	4.01	17.07
78215	liver & spleen imaging;static only	11.26	2.76	8.50
78216	liver&spleen imag;w/vascular flow	13.33	3.23	10.09
78220	liver fxn w/hep-bil ag,w/serial im	13.57	2.79	10.78
78223	hep-bil duct syst imag w/gallbl	15.30	4.67	10.62
78225	liver-lung imag(eq subphr absc)	14.50	3.04	11.46

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Proc Code	Description	GLOBAL RVS	PROFESSIONAL RVS	TECHNICAL RVS
78230	salivary gland imaging	8.87	2.57	6.30
78231	salivary gland imag;w/serial imag	12.14	2.96	9.18
78232	salivary gland fxn study	12.93	2.68	10.24
78258	esophageal motility	12.49	4.15	8.35
78261	gastric mucosa imaging	15.71	3.87	11.84
78262	gastroesophageal reflux study	16.11	3.82	12.29
78264	gastric emptying study	16.28	4.37	11.91
78270	vit.B12 absorp(eg Schill.);wo/int f	5.61	1.13	4.48
78271	vit.B12 absorp(eg Schill);w/int f	5.91	1.13	4.78
78272	vit.B12 absorp.w/&w/o intrinsic fact	8.17	1.49	6.68
78276	GI asp. blood loss loc.	13.27	4.01	9.26
78278	acute GI blood loss imaging	19.64	5.53	14.11
78280	GI blood loss study(eg stool ct)	11.51	2.10	9.41
78290	bowel imag(eg ect gast muc/Meckels)	12.65	3.84	8.80
78291	perit-venous shnt patency(egLeVeen)	13.80	4.92	8.88
78300	bone imaging;ltd area(eg skull,pel)	10.69	3.48	7.21
78305	bone imaging; mult. areas	15.19	4.56	10.62
78306	bone imaging; whole body	16.93	4.56	12.37
78310	bone imaging;vascular flow only	6.18	2.76	3.41
78315	bone imaging;3 phase technique	18.79	4.98	13.81
78320	bone imaging, tomgraphic SPECT	22.88	5.81	17.07
78350	bone density. single phot	3.44	1.24	2.20
78351	bone density;dual photon absor	6.54	1.38	5.16
78380	joint imaging;ltd area	11.10	2.90	8.20
78381	joint imaging;mult. areas	14.57	4.17	10.40
78415	card blood pool imag,fxn imaging	10.41	2.60	7.82
78425	cardiac regurgitant index	4.46	2.18	2.28
78428	cardiac shunt detection	10.89	4.37	6.53
78435	cardiac flow imag(ie angiocardiog)	13.24	2.76	10.47
78445	vasc flow imag(ie angio,venography)	8.23	2.76	5.46
78455	ven thrombosis st(eg radact fibrin)	15.63	4.09	11.53
78457	ven thrombosis imag(eg venogr);unil	11.95	4.29	7.66
78458	ven thrombosis imag(eg venogr);bil	16.64	5.03	11.61
78460	reg.myocard perf;qual,at rest	11.67	4.84	6.83
78461	reg.myocard perf;qual,at rest+ex/pharm	20.57	6.91	13.66
78462	reg.myocard perf;quant,at rest only	14.83	5.11	9.71
78463	reg.myocard perf;quant,at rest+ex/pharm	24.26	7.19	17.07
78464	reg.myocard perf;tomogr(SPECT),rest	26.57	6.08	20.49
78465	reg.myocar prf;tomo(SPECT),rest,ex/phar	42.30	8.16	34.15
78466	myocard img,infarct avid,rest;qual	11.49	3.90	7.59
78467	myocard img,infarct avid,rest;quant	13.28	4.17	9.11
78468	myocard img,infrct avid,rest;1pass tech	15.07	4.45	10.62
78469	myocard img,infrct avid,rest;emis.tomo	20.32	5.14	15.18
78470	cardiac output	13.19	2.49	10.70
78471	card BPI,gtd eq,rst;wll mtn&ej frac	20.43	5.25	15.18

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Proc Code	Description	GLOBAL RVS	PROFESSIONAL RVS	TECHNICAL RVS
78472	card BPI,gtd eq,rst;wll mtn&rg ejfr	21.44	5.50	15.94
78474	card BPI,gtd eq,rst;wll mtn&rg ejfr&vvd	23.23	5.78	17.45
78475	card BPI,gtd eq,rst;qnt wll mtn&ex/phrm	33.95	6.64	27.32
78476	card BPI,gtd eq,rst;qn wm&ejfr,ex/phrm	35.32	6.64	28.68
78477	card BPI,gtd eq,rst;qwm&ejf,vvd,ex/phrm	38.33	6.91	31.42
78479	card BPI,gtd eq,rst;ser st,any comb	5.92	5.92	NO TC
78481	card BPI,1-pass tech;wll mtn& ejfr	20.68	5.50	15.18
78484	card BPI,1-pass,rst;qnt wl mtn&ejfr&vvd	23.23	5.78	17.45
78485	card BPI,1-pass;qnt wll mtn&ex/phrm	33.95	6.64	27.32
78486	card BPI,1-pass,rst;qn wm&ejfr,ex/phrm	35.32	6.64	28.68
78487	card BPI,1-pass,rst;qwm&ejf,vvd,ex/phrm	38.33	6.91	31.42
78489	card BPI,1-pass,rst;ser st,any comb	5.92	5.92	NO TC
78580	pulmonary perf.imag;particulate	14.06	4.12	9.94
78581	pulmonary perf.imag;gaseous	10.78	3.87	6.91
78582	pul.perf.imag;gas w/vent,rebr&wash	16.04	5.11	10.93
78584	pul.perf.imag,parti.w/vent;1 breath	14.79	5.53	9.26
78585	pul.perf.im,par.w/vent;r&w,w/w/o1b	22.40	6.08	16.31
78586	pul.vent.imag;aerosol;1 projection	9.72	2.21	7.51
78587	pul.vent.imag aerosol;mult(eg A/P&L)	10.88	2.76	8.12
78591	pul.vent.imag;gaseous,1breath,1proj	10.48	2.21	8.27
78593	pul.vent.im;gas,w/r&w,w/w/o1br;1pro	12.78	2.76	10.02
78594	pul.vent.im;gas,r&w,w/w/o1br;mult	17.46	3.04	14.42
78600	brain imaging,ltd;static	10.81	2.46	8.35
78601	brain imaging,ltd;w/vascular flow	12.80	2.93	9.86
78605	brain imaging,compl;static	12.91	3.04	9.86
78606	brain imaging,compl;w/vascular flow	14.82	3.59	11.23
78607	brain imaging,compl;tomograph (ECT)	25.88	6.91	18.97
78610	brain imaging,vascular flow only	6.18	1.63	4.55
78615	cerebral blood flow	13.50	2.35	11.15
78630	CSF flow,imag(wo/intro);cisternog	18.38	3.82	14.57
78635	CSF flow,imaging;ventriculography	10.82	3.46	7.36
78645	CSF flow,imaging;shunt evaluation	13.20	3.26	9.94
78650	CSF flow,imaging;leak detect&locate	16.86	3.43	13.43
78652	CSF flow imaging, tomographic (ECT)	22.13	5.06	17.07
78655	radionuclide ID of eye tumor	17.60	3.18	14.42
78660	dacryocystography	9.19	3.04	6.15
78700	kidney imaging;static only	11.29	2.49	8.80
78701	kidney imaging;w/vascular flow	13.08	2.76	10.32
78704	kidney imaging;w/fxn st(eg im reno)	15.61	4.15	11.46
78707	kidney imag;w/vasc.flow&func study	18.23	5.25	12.98
78710	kidney imaging (SPECT)	20.81	3.73	17.07
78715	kidney vascular flow only	6.21	1.66	4.55
78725	kidney fnx study only	7.23	2.07	5.16
78726	kidney fxn st only;w/pharm interv	13.47	4.89	8.57
78727	kidney transplant evaluation	17.06	5.53	11.53

APPENDIX A

RADIOLOGY NATIONAL RELATIVE VALUE SCALE

Proc Code	Description	GLOBAL RVS	PROFESSIONAL RVS	TECHNICAL RVS
78730	urinary bladder residual study	6.18	1.94	4.25
78740	ureter reflux st(RN V-cystogr)	9.41	3.26	6.15
78760	testicular imaging	11.44	3.70	7.74
78761	testicular imaging;w/vascular flow	13.27	4.01	9.26
78800	RN local of tumor;ltd	13.51	3.65	9.86
78801	RN local of tumor;mult areas	16.61	4.40	12.22
78802	RN local of tumor;whole body	20.85	4.84	16.01
78803	tumor localization (SPECT)	25.05	6.08	18.97
78805	RN local of abscess;ltd area	13.68	3.82	9.86
78806	RN local of abscess;whole body	20.77	4.76	16.01
78890	gen auto data,interdisc;simp,<30min	4.07	0.28	3.79
78891	gen auto data,interdisc;cmplx,>30mn	8.14	0.55	7.59
79000	RN tx,hyperthyroid;init w/eval pt	17.62	10.04	7.59
79001	RN tx,hyperthyroid;subseq,each vst	9.63	5.83	3.79
79020	RN tx,thyr sup(euthyr card d)w/eval	17.68	10.09	7.59
79030	RN ablation gland for thyroid ca	19.34	11.75	7.59
79035	RN for metastases of thyroid ca	21.66	14.07	7.59
79100	RN tx polycyth vera,chr leuk,q tx	14.97	7.38	7.59
79200	intracavity radioactive colloid th	18.73	11.14	7.59
79400	RN,nonthyroid,nonhemat(eg met bone)	18.56	10.98	7.59
79440	intra-articular RN therapy	18.73	11.14	7.59

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APPENDIX B

RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

CPT-4 PROCEDURE CODE	DESCRIPTION	GLOBAL RVS	PROFESSIONAL COMPONENT (PC) RVS	TECHNICAL COMPONENT RVS
70010	myelography,post fossa,s&i	LOCAL	6.64	GLOBAL - PC
70011	myelography,post fossa,compl	LOCAL	13.35	GLOBAL - PC
70015	cisternography,pos contr,s&i	LOCAL	6.64	GLOBAL - PC
70016	cisternography,pos contr,compl	LOCAL	13.35	GLOBAL - PC
72240	myelography,cx,s&i	LOCAL	5.09	GLOBAL - PC
72241	myelography,cx,compl	LOCAL	11.81	GLOBAL - PC
72255	myelography,thoracic,s&i	LOCAL	5.09	GLOBAL - PC
72256	myelography,thoracic,compl	LOCAL	11.81	GLOBAL - PC
72265	myelography,lumbarsacral,s&i	LOCAL	4.62	GLOBAL - PC
72266	myelography,lumbarsacral,compl	LOCAL	11.34	GLOBAL - PC
72270	myelography,entire spinal canal,s&i	LOCAL	7.44	GLOBAL - PC
72271	myelography,compl spinal canal,compl	LOCAL	14.16	GLOBAL - PC
74300	cholangiography &/pancreatogr, OR	LOCAL	1.99	GLOBAL - PC
74301	cholangiogr&/pancreatog,add set, OR	LOCAL	1.16	GLOBAL - PC
74327	po bildct st rem,percu,fl mon & rad	LOCAL	3.93	GLOBAL - PC
74475	int cath ren pel,percu,mon&rad,s&i	LOCAL	3.10	GLOBAL - PC
74476	int cath ren pel,percu,mon&rad,comp	LOCAL	22.31	GLOBAL - PC
74480	int cath uret fr r-pelv,mon&rad,s&i	LOCAL	3.10	GLOBAL - PC
74481	int cath uret fr r-pelv,mon&rad,com	LOCAL	29.00	GLOBAL - PC
75500	angiocardiography by cine,s&i	LOCAL	6.39	GLOBAL - PC
75501	angiocardiography by cine,compl	LOCAL	22.56	GLOBAL - PC
75505	angiocardiography,serial,1 pl;s&i	LOCAL	6.39	GLOBAL - PC
75506	angiocardiography,serial,1 pl;comp	LOCAL	22.56	GLOBAL - PC
75507	angiocardiography,ser,mult-pl,s&i	LOCAL	7.35	GLOBAL - PC
75509	angiocardiogr,ser,multpl,com,w/cath	LOCAL	23.53	GLOBAL - PC
75519	select cardiac cat,right,s&i	LOCAL	4.70	GLOBAL - PC
75520	select cardiac cat,right,comp	LOCAL	16.17	GLOBAL - PC
75523	select cardiac cath,left,s&i	LOCAL	4.70	GLOBAL - PC
75524	select cardiac cath,left,comp	LOCAL	16.17	GLOBAL - PC
75527	select cardiac cath,r&l,s&i,	LOCAL	8.38	GLOBAL - PC
75528	select cardiac cath,r&l,compl	LOCAL	24.27	GLOBAL - PC
75600	aortography, thor,wo/serial,s&i	LOCAL	2.76	GLOBAL - PC
75601	aortography,thor,wo/serial,compl	LOCAL	18.94	GLOBAL - PC
75605	aortography,thor,serial,s&i	LOCAL	6.39	GLOBAL - PC
75606	aortography, thor,serial,compl	LOCAL	22.56	GLOBAL - PC
75620	aortography abd-translum,wo/ser,s&i	LOCAL	2.76	GLOBAL - PC
75621	aortography,abd-translum,wo/ser,comp	LOCAL	18.94	GLOBAL - PC
75622	aortography,abd,cath,wo/serial,s&i	LOCAL	2.76	GLOBAL - PC
75623	aortography,abd,cath,wo/serial,compl	LOCAL	18.94	GLOBAL - PC
75625	aortography,abd translum,w/ser,s&i	LOCAL	6.39	GLOBAL - PC

APPENDIX B

RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

CPT-4 PROCEDURE CODE	DESCRIPTION	GLOBAL RVS	PROFESSIONAL COMPONENT (PC) RVS	TECHNICAL COMPONENT RVS
75626	aortography,abd-translum,w/ser,compl	LOCAL	22.56	GLOBAL - PC
75627	aortography,abd,cath,w/serial,s&i	LOCAL	6.39	GLOBAL - PC
75628	aortography,abd,cath,w/serial,compl	LOCAL	22.56	GLOBAL - PC
75630	aortgr abd&bil ilfem,cath,w/ser;s&i	LOCAL	7.35	GLOBAL - PC
75631	aortgr abd&bil ilfem,cath,w/ser,comp	LOCAL	23.53	GLOBAL - PC
75650	angiography,cx-cerebr,cath w/vo,s&i	LOCAL	8.32	GLOBAL - PC
75651	angiogr,cx-cerebr,cath,w/vo;compl	LOCAL	28.50	GLOBAL - PC
75652	angio,cx-cereb,sel cath,1v,w/vo;s&i	LOCAL	8.32	GLOBAL - PC
75653	angio,cx-cereb,sel cth,1v,w/vo;comp	LOCAL	28.50	GLOBAL - PC
75654	angio,cx-cereb.sel cath,2v,w/vo,s&i	LOCAL	11.22	GLOBAL - PC
75655	angio,cx-cereb,sel cath,2v,w/vo,comp	LOCAL	36.38	GLOBAL - PC
75656	angio,cxcereb,selcth,3-4v,w/vo;s&i	LOCAL	14.13	GLOBAL - PC
75657	angio,cxcereb,selcth,3-4v,w/vo;compl	LOCAL	42.33	GLOBAL - PC
75658	angiography,brachial,retro,s&i	LOCAL	7.35	GLOBAL - PC
75659	angiography,brachial,retro,compl	LOCAL	23.53	GLOBAL - PC
75660	angio extcarot,cereb,unil,sel;s&i	LOCAL	7.35	GLOBAL - PC
75661	angio,extcarot,cereb,unil,sel;compl	LOCAL	23.53	GLOBAL - PC
75662	angio,ext carot,cereb,bil,s&i	LOCAL	9.29	GLOBAL - PC
75663	angio,ext carot,cereb,bil,compl	LOCAL	29.47	GLOBAL - PC
75665	angio,carotid,cereb,unil,s&i	LOCAL	7.35	GLOBAL - PC
75667	angio,carot,cereb,unil,dir punc,comp	LOCAL	23.53	GLOBAL - PC
75669	angio,carot,cereb,unil,cath,compl	LOCAL	23.53	GLOBAL - PC
75671	angio,carot,cereb,bil;s&i	LOCAL	9.29	GLOBAL - PC
75672	angio,carot,cereb,bil;compl	LOCAL	33.56	GLOBAL - PC
75673	angio,carot,cereb,bil;cath, compl	LOCAL	36.38	GLOBAL - PC
75676	angiography,carotid,cx,unil,s&i	LOCAL	7.35	GLOBAL - PC
75677	angio carot,cx,unil,dir punc,compl	LOCAL	23.53	GLOBAL - PC
75678	angio,carot,cx,unil,cath,compl	LOCAL	23.53	GLOBAL - PC
75680	angio carotid,cx,bil,s&i	LOCAL	9.29	GLOBAL - PC
75681	angio carotid,cx,bil,dir punc,comp	LOCAL	33.56	GLOBAL - PC
75682	angio,carotid,cx,bil,cath,compl	LOCAL	36.38	GLOBAL - PC
75685	angiography,vertebral,s&i	LOCAL	7.35	GLOBAL - PC
75686	angiography,vertebral,dir punc,comp	LOCAL	23.53	GLOBAL - PC
75687	angiography,vertebral,cath,compl	LOCAL	23.53	GLOBAL - PC
75690	angiography,vertebral,cx,unil,s&i	LOCAL	7.35	GLOBAL - PC
75692	angiography,vertebral,cx,unil,comp	LOCAL	23.53	GLOBAL - PC
75695	angiography,vertebral,cx,bil,s&i	LOCAL	9.29	GLOBAL - PC
75697	angiography,vertebral,cx,bil,compl	LOCAL	28.50	GLOBAL - PC
75705	angiography,spinal,select,s&i	LOCAL	12.19	GLOBAL - PC
75706	angiography,spinal,select,compl	LOCAL	52.42	GLOBAL - PC

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RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

CPT-4 PROCEDURE CODE	DESCRIPTION	GLOBAL RVS	PROFESSIONAL COMPONENT (PC) RVS	TECHNICAL COMPONENT RVS
75710	angiography,extrem,unil;s&i	LOCAL	6.39	GLOBAL - PC
75711	angiography,extrem,unil,wo/ser;comp	LOCAL	17.14	GLOBAL - PC
75712	angiography,extrem,unil;byser;compl	LOCAL	23.53	GLOBAL - PC
75716	angiography,extremity,bil,s&i	LOCAL	7.35	GLOBAL - PC
75717	angiography,extrem bil,wo/ser,comp	LOCAL	17.14	GLOBAL - PC
75718	angiography,extrem,bil,w/ser,s&i	LOCAL	23.53	GLOBAL - PC
75722	angio,renal,unil,sel w/a-gram,s&i	LOCAL	6.39	GLOBAL - PC
75723	angio,renal,unil,selw/a-gram,compl	LOCAL	27.54	GLOBAL - PC
75724	angio,renal,bil,sel w/a-gram,s&i	LOCAL	8.32	GLOBAL - PC
75725	angio,renal,bil,sel w/a-gram,compl	LOCAL	32.51	GLOBAL - PC
75726	angio,visceral,sel/supsel,s&i	LOCAL	6.39	GLOBAL - PC
75727	angio,visceral,sel w/wo a-gram,comp	LOCAL	27.51	GLOBAL - PC
75728	angio,visceral,sup select,compl	LOCAL	32.51	GLOBAL - PC
75731	angio,adrenal,unil,select,s&i	LOCAL	6.39	GLOBAL - PC
75732	angio,adrenal,unil,select,compl	LOCAL	22.56	GLOBAL - PC
75733	angio,adrenal,bil,select,s&i	LOCAL	7.35	GLOBAL - PC
75734	angio,adrenal,bil,select,compl	LOCAL	32.51	GLOBAL - PC
75736	angio,pelvic,sel/suprasel,s&i	LOCAL	6.39	GLOBAL - PC
75737	angio,pelvic,select,compl	LOCAL	22.56	GLOBAL - PC
75738	angio,pelvic,supraselect,compl	LOCAL	27.54	GLOBAL - PC
75741	angio,pulmonary,unil,select,s&i	LOCAL	7.35	GLOBAL - PC
75742	angio,pulmonary,unil,select,compl	LOCAL	22.56	GLOBAL - PC
75743	angio,pulmonary,bil,select,s&i	LOCAL	9.29	GLOBAL - PC
75744	angio,pulmonary,bil,select;compl	LOCAL	29.47	GLOBAL - PC
75746	angio,pulmonary,nonsel cath/inj,s&i	LOCAL	6.39	GLOBAL - PC
75747	angio,pulmonary,cath,nonselect,comp	LOCAL	16.81	GLOBAL - PC
75748	angio,pulmonary,venous inj,compl	LOCAL	12.14	GLOBAL - PC
75750	angio,coronary,root inj,s&i	LOCAL	6.39	GLOBAL - PC
75751	angio,coronary,root inj, compl	LOCAL	22.56	GLOBAL - PC
75752	angio,cor,unil inj,w/l ventr;s&i	LOCAL	6.39	GLOBAL - PC
75753	angio,cor,unil inj,w/l ventr,comp	LOCAL	28.56	GLOBAL - PC
75754	angio,cor,bil inj,w/l vent&val;s&i	LOCAL	7.38	GLOBAL - PC
75755	angio,cor,bil inj,w/l vent&val;comp	LOCAL	33.54	GLOBAL - PC
75756	angio,int mammary,s&i	LOCAL	6.39	GLOBAL - PC
75757	angio,int mammary,compl	LOCAL	22.56	GLOBAL - PC
75762	angio,CAB,unil,sel inj;s&i	LOCAL	6.39	GLOBAL - PC
75764	angio,CAB,unil sel inj;compl	LOCAL	28.50	GLOBAL - PC
75766	angio,CAB,mult sel inj;s&i	LOCAL	7.35	GLOBAL - PC
75767	angio,CAB,mult sel inj;compl	LOCAL	33.54	GLOBAL - PC
75774	angio,sel ea add vess p basic,s&i	LOCAL	1.94	GLOBAL - PC

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APPENDIX B

RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

CPT-4 PROCEDURE CODE	DESCRIPTION	GLOBAL RVS	PROFESSIONAL COMPONENT (PC) RVS	TECHNICAL COMPONENT RVS
75775	angio,sel,ea add vess p basic,compl	LOCAL	5.94	GLOBAL - PC
75790	angio,a-v shunt	LOCAL	10.28	GLOBAL - PC
75801	lymphangio,extremity only,unil,s&i	LOCAL	4.53	GLOBAL - PC
75802	lymphangio,extremity only,unil,comp	LOCAL	16.64	GLOBAL - PC
75803	lymphangio,extremity only,bil,s&i	LOCAL	6.52	GLOBAL - PC
75804	lymphangio,extremity only,bil,compl	LOCAL	24.69	GLOBAL - PC
75805	lymphangio,pelvic/abd,unil,s&i	LOCAL	4.53	GLOBAL - PC
75806	lymphangio,pelvic/abd,unil,compl	LOCAL	16.64	GLOBAL - PC
75807	lymphangio,pelvic/abd,bil,s&i	LOCAL	6.52	GLOBAL - PC
75808	lymphangio,pelvic/abd,bil,compl	LOCAL	24.69	GLOBAL - PC
75810	splenoportography,s&i	LOCAL	6.39	GLOBAL - PC
75811	splenoportography,compl	LOCAL	19.80	GLOBAL - PC
75820	venography,ext,unilat,s&i only	LOCAL	3.93	GLOBAL - PC
75821	venography,ext,unil,compl	LOCAL	6.80	GLOBAL - PC
75822	venography,extr,bil,s&i only	LOCAL	5.89	GLOBAL - PC
75823	venography,extr,bil,compl	LOCAL	9.79	GLOBAL - PC
75825	venography,inf cav,w/serial,s&i	LOCAL	6.39	GLOBAL - PC
75826	venography,inf cav,w/serial,compl	LOCAL	16.81	GLOBAL - PC
75827	venography,sup cav,with serial,s&i	LOCAL	6.39	GLOBAL - PC
75828	venography,sup cav,w/serial,compl	LOCAL	16.81	GLOBAL - PC
75831	venography,renal,unil,select;s&i	LOCAL	6.39	GLOBAL - PC
75832	venography,renal,unil,select,compl	LOCAL	19.30	GLOBAL - PC
75833	venography,renal,bil,select,s&i	LOCAL	8.32	GLOBAL - PC
75834	venography,renal,bil,select,compl	LOCAL	23.83	GLOBAL - PC
75840	venography,adrenal,unil,select,s&i	LOCAL	6.39	GLOBAL - PC
75841	venography,adrenal,unil,sel,compl	LOCAL	19.30	GLOBAL - PC
75842	venography,adrenal,bil,sel,s&i	LOCAL	8.32	GLOBAL - PC
75843	venography,adrenal,bil,select,compl	LOCAL	23.83	GLOBAL - PC
75845	venography,azygos,sel/nonsel,s&i	LOCAL	6.39	GLOBAL - PC
75846	venography,azygos,select,compl	LOCAL	19.30	GLOBAL - PC
75847	venography,azygos,nonsel,compl	LOCAL	16.70	GLOBAL - PC
75850	venography,intraosseous,s&i	LOCAL	3.93	GLOBAL - PC
75851	venography,intraosseous,comp	LOCAL	10.84	GLOBAL - PC
75860	venography, sinus/jug,cath;s&i	LOCAL	6.39	GLOBAL - PC
75861	venography, sinus/jug,cath;compl	LOCAL	19.30	GLOBAL - PC
75870	venography,sup sag sinus;s&i	LOCAL	6.39	GLOBAL - PC
75871	venography,sup sag sinus;compl	LOCAL	13.30	GLOBAL - PC
75872	venography,epidural,s&i	LOCAL	6.39	GLOBAL - PC
75873	venography,epidual,compl	LOCAL	19.30	GLOBAL - PC
75880	venography,orbital,s&i	LOCAL	3.93	GLOBAL - PC

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RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

CPT-4 PROCEDURE CODE	DESCRIPTION	GLOBAL RVS	PROFESSIONAL COMPONENT (PC) RVS	TECHNICAL COMPONENT RVS
75881	venography,orbital,compl	LOCAL	6.80	GLOBAL - PC
75885	percu transhep porto w/hemody;s&i	LOCAL	8.07	GLOBAL - PC
75886	percu transhep porto w/hemody;compl	LOCAL	27.45	GLOBAL - PC
75887	percu transhep porto wo/hemody,s&i	LOCAL	8.07	GLOBAL - PC
75888	percu transhep porto wo/hemody;compl	LOCAL	27.45	GLOBAL - PC
75889	hepat veno,wed/free,w/hemody,s&i	LOCAL	6.39	GLOBAL - PC
75890	hepat veno,wed/free,w/hemody,compl	LOCAL	19.30	GLOBAL - PC
75891	hepat veno,wed/free,wo/hemody,s&i	LOCAL	6.39	GLOBAL - PC
75892	hepat veno,wed/free,wo/hemody,compl	LOCAL	19.30	GLOBAL - PC
75893	venous sampling thru cath wo/angio	LOCAL	3.10	GLOBAL - PC
75894	trans cath tx,emboliz w/angio,s&i	LOCAL	7.35	GLOBAL - PC
75895	transcath tx,emboliz w/angio,compl	LOCAL	40.53	GLOBAL - PC
75896	transcath tx,infus w/angio,s&i	LOCAL	7.35	GLOBAL - PC
75897	transcath tx,infus w/angio,compl	LOCAL	40.53	GLOBAL - PC
75940	percu place ivc filter,s&i	LOCAL	3.10	GLOBAL - PC
75941	percu place ivc filter,compl	LOCAL	44.24	GLOBAL - PC
75950	transcath intrav occ,temp,w/ang,s&i	LOCAL	7.35	GLOBAL - PC
75951	transcath intrav occ,temp,w/ang,com	LOCAL	40.53	GLOBAL - PC
75955	transcath intrav occ,perm,w/ang,s&i	LOCAL	7.35	GLOBAL - PC
75956	transcath intrav occ,perm,w/ang,com	LOCAL	40.53	GLOBAL - PC
75961	transcath retriev,percu,fx v/a cath	LOCAL	23.83	GLOBAL - PC
75962	percu translum angio,perip art,s&i	LOCAL	3.10	GLOBAL - PC
75963	percu translum angio,perip art,compl	LOCAL	40.53	GLOBAL - PC
75964	percu translum angio q ad per a,s&i	LOCAL	1.94	GLOBAL - PC
75965	percu translum angio q ad per a,com	LOCAL	27.65	GLOBAL - PC
75966	percu translum angio,viscer a,s&i	LOCAL	7.35	GLOBAL - PC
75967	percu translum angio,viscer a,comp	LOCAL	48.82	GLOBAL - PC
75968	percu translum angio,q ad visc a,s&i	LOCAL	1.94	GLOBAL - PC
75969	percu translum angio,q ad visc a,com	LOCAL	32.07	GLOBAL - PC
75970	transcath bx,s&i	LOCAL	4.62	GLOBAL - PC
75971	transcath bx,compl	LOCAL	16.51	GLOBAL - PC
75980	percu transhep bil drain w/cont,s&i	LOCAL	8.07	GLOBAL - PC
75981	percu transhep bil drain w/cont,com	LOCAL	27.45	GLOBAL - PC
75982	percu pl cath for inop bil obs;s&i	LOCAL	8.07	GLOBAL - PC
75983	percu pl cath for inop bil obs;compl	LOCAL	34.25	GLOBAL - PC
76140	consult on x-ray made elsewhere	LOCAL	LOCAL	GLOBAL - PC
76350	subtraction in conjunction	LOCAL	LOCAL	GLOBAL - PC
76499	unlisted diagnostic radiology proc	LOCAL	LOCAL	GLOBAL - PC
76999	U/S unlisted proc	LOCAL	LOCAL	GLOBAL - PC
77299	unlist proc,th rad clin tx planning	LOCAL	LOCAL	GLOBAL - PC

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RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

CPT-4 PROCEDURE CODE	DESCRIPTION	GLOBAL RVS	PROFESSIONAL COMPONENT (PC) RVS	TECHNICAL COMPONENT RVS
77399	unlist proc,med rad phys,dosim&dev	LOCAL	LOCAL	GLOBAL - PC
77499	unlist proc,ther rad clin tx manage	LOCAL	LOCAL	GLOBAL - PC
77799	unlist proc,clinical brachytherapy	LOCAL	LOCAL	GLOBAL - PC
78099	unlisted endocrine;diag.nuc.med.	LOCAL	LOCAL	GLOBAL - PC
78172	chelatable iron	LOCAL	3.04	GLOBAL - PC
78199	unl hemat,retic,&lymph pr,dx nuc med	LOCAL	LOCAL	GLOBAL - PC
78282	GI protein loss	LOCAL	2.10	GLOBAL - PC
78299	unl GI procedure;dx nuc med	LOCAL	LOCAL	GLOBAL - PC
78399	unl musculoskel proc,dx NM	LOCAL	LOCAL	GLOBAL - PC
78414	ventricle eject frac w/probe tech	LOCAL	2.49	GLOBAL - PC
78499	unl CV procedure;dx NM	LOCAL	LOCAL	GLOBAL - PC
78599	unl resp proc;dx NM	LOCAL	LOCAL	GLOBAL - PC
78699	unl nervous system;dx NM	LOCAL	LOCAL	GLOBAL - PC
78799	unl genitourinary,dx NM	LOCAL	LOCAL	GLOBAL - PC
78990	provision of diag. radionuclide(s)	LOCAL	LOCAL	GLOBAL - PC
78999	unl misc.procedure;dx NM	LOCAL	LOCAL	GLOBAL - PC
79300	interstitial radioactive colloid tx	LOCAL	8.96	GLOBAL - PC
79420	intra vasc RN tx,particulate	LOCAL	8.43	GLOBAL - PC
79900	provis therapeutic radionuclide(s)	LOCAL	LOCAL	GLOBAL - PC
79999	unl RN therapeutic procedure	LOCAL	LOCAL	GLOBAL - PC

Other codes to be Priced by the Carrier

Local Codes

HCPCS R Codes

HCPCS Codes with modifiers other than blank (Global), Professional (26) or Technical.

New technology or new services

Appendix C

HCFA Charge-Based Relative Value Scale Compared with ACR Relative Value Scale

Procedure		Professional Component		Global Service	
		HCFA	ACR	HCFA	ACR
71010	Chest X-Ray	1.00	1.00	2.50	2.35
71020	Chest X-Ray	1.24	1.21	3.10	3.04
70470	Brain CT	8.10	7.13	20.45	22.39
70450	Brain CT	6.3	4.78	15.7	19.9
74160	CT Abdomen w/contrast	7.8	7.1	19.6	29.1
76700	Echocardiography	4.5	4.4	11.2	10.1
76091	Mammography	2.47	2.2	6.17	6.0
78306	Nuclear Bone Imaging	5.27	4.5	13.0	16.9
74270	Diagnostic Barium Enema	2.8	3.8	7.0	8.8
74170	CT Abdomen w/contrast	9.3	7.8	23.25	35.1
74240	Upper GI	2.9	3.8	7.25	8.1
70460	CT Head	7.1	6.3	17.8	24.5
74280	Barium Enema	3.5	5.5	8.9	11.9
72110	Spine X-Ray	2.04	1.75	5.0	4.4
72131	CT Spine	7.4	6.5	18.6	25.5
74150	CT Abdomen	7.1	6.6	17.8	24.8
74241	Upper GI	3.16	3.87	7.8	8.2
70551	Brain MRI	11.8	8.2	29.5	44.3
73510	Hip X-Ray	1.35	1.14	3.37	2.8

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